

**BOARD OF ADJUSTMENT AGENDA
REGULAR MEETING
MONDAY, JANUARY 25, 2016**

MEETING: 4:30 P.M. - CITY COUNCIL CHAMBERS

1. Call to Order.
2. Roll Call.
3. Public comment period. The general public is invited to address the Board regarding any item on this agenda. The overall and individual speaking time allotments may be limited by the Chair.
4. Dispense with the reading and approve the minutes of the October 26, 2015, Regular Meeting as prepared.
5. Dispense with the reading and approve the minutes of the November 30, 2015, Regular Meeting as prepared.
6. Dispense with the reading and approve the minutes of the December 28, 2015, Regular Meeting as prepared.
7. Consider a request of Rick Fidler, on behalf of Casey's Retail Company, Inc., the owner of approximately 0.7 acres located at 401 W 23rd St., for approval of a Variance to Section 405, Fremont Zoning Ordinance, pertaining to Site Development Regulations, particularly street side setbacks.
8. Consider a request of Justin Cash, on behalf of Ashley Cash, the owner of approximately 3.9 acres located at 1242 S Ridge Rd., for approval of a Variance to Section 704.c., Fremont Zoning Ordinance, pertaining to Architectural Requirements for Accessory Buildings.
9. Consider a request of Kenneth Heatherly, the owner of approximately 1.3 acres located at 302 S Woodland Ct., for approval of a Variance to Section 405, Fremont Zoning Ordinance, pertaining to Development Regulations and Table 4-2, *Permitted Uses by Zoning Districts*, in particular.

10. Adjournment.

THIS MEETING WAS PRECEDED BY PUBLICIZED NOTICE IN THE FREMONT TRIBUNE, THE AGENDA DISPLAYED IN THE LOBBY OF THE MUNICIPAL BUILDING AND POSTED ONLINE AT WWW.FREMONTNE.GOV IN ACCORDANCE WITH THE NEBRASKA OPEN MEETINGS ACT, A COPY OF WHICH IS POSTED CONTINUALLY IN THE COUNCIL CHAMBERS FOR PUBLIC INSPECTION, AND SAID MEETING IS OPEN TO THE PUBLIC. A COPY OF THE AGENDA WAS ALSO KEPT CONTINUALLY CURRENT AND AVAILABLE TO THE PUBLIC IN THE PRINCIPLE OFFICE OF THE DEPARTMENT OF PLANNING, 400 EAST MILITARY AVENUE. THE BOARD OF ADJUSTMENT RESERVES THE RIGHT TO ADJUST THE ORDER OF ITEMS ON THIS AGENDA.

**BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
OCTOBER 26, 2015 – 4:30 PM**

PRESENT: Chairman, Phil Bang, Members, Brad Fooker, and Skip Sawyer,
Alternate Member, Scott Brown, and Planning Director, Troy Anderson

ABSENT: Member Curt Friedrich

1. Call to Order. Chairman Bang called the meeting to order at 4:30 p.m.
2. Roll Call. A roll call showed three (3) standing members present, one (1) alternate member present, and one (1) standing member absent – a quorum was established.

Chairman Bang then read the following statement: This meeting was preceded by publicized notice in the Fremont Tribune, the agenda displayed in the lobby of the Municipal Building and posted online at www.fremontne.gov in accordance with the Nebraska open meetings act, a copy of which is posted continually in the council chambers for public inspection and said meeting is open to the public. A copy of the agenda was also kept continually current and available to the public in the principle office of the Department of Planning, 400 East Military Avenue. The Planning Commission reserves the right to adjust the order of items on this agenda. This meeting is hereby declared to be duly convened and in open session.

3. Elect a Chair and Vice-Chair in accordance with Board By-laws.

Chairman Bang opened the floor to Chair nominations. It was moved by Member Fooker, and seconded by Member Sawyer, to nominate Chairman Bang to continue to serve as Chair for the remainder of the calendar year. A roll call vote showed all members present voting aye – the motion carried unanimously.

Chairman Bang then opened the floor to Vice-Chair nominations. It was moved by Member Fooker, and seconded by Member Sawyer, to nominate Curt Friedrich as Vice-Chair for the remainder of the calendar year. A roll call vote showed all members present voting aye – the motion carried unanimously.

4. Public comment period.

Chairman Bang opened the floor to public comments.

Hearing none, Bang closed the floor and proceeded onto the regular agenda.

5. Minutes of the June 29, 2014, Regular Meeting.

Chairman Bang read the item into the record. Hearing no discussion, Bang entertained a motion.

Motion: It was moved by Member Fooker, and seconded by Member Sawyer, to dispense with the reading of the minutes and approve the minutes as

provided. A roll call vote showed all members present voting aye – the motion carried unanimously.

6. Minutes of the September 28, 2014, Regular Meeting.

Chairman Bang read the item into the record. Hearing no discussion, Bang entertained a motion.

Motion: It was moved by Member Fooker, and seconded by Member Sawyer, to dispense with the reading of the minutes and approve the minutes as provided. A roll call vote showed all members present voting aye – the motion carried unanimously.

7. Consider a request of Robert Steenblock, on behalf of Fremont Presbyterian Church, the owner of approximately 1.6 acres located at 520 W. Linden Ave., for approval of a Variance to Section 405, Fremont Zoning Ordinance, pertaining to Site Development Regulations, particularly street side setbacks.

Chairman Bang read the item into the record. Bang then proceeded to open the floor to appellant arguments. Representative of the appellant, Robert Steenblock, presented their case, arguing issues relating to main entrance orientation, sidewalks and lack of objection from neighboring property owners. Following comments from Mr. Steenblock, appellant representative John Ashley argued organization visioning, programming and traffic as reasons for granting the variance. Following comments from Mr. Ashley, appellant representative Dan Martinez argued main entrance orientation, visibility impediments, on-site maneuvering, and other examples of similar circumstances in the community.

Hearing nothing further from the appellant, Bang closed the floor to appellant arguments and proceeded to open the floor to public hearing.

Hearing no comments from the public, Bang closed the floor to public hearing and opened the floor to appellee arguments. Planning Director Anderson recommended disapproval as the hardship claimed by the applicant was both self-inflicted and pecuniary.

Hearing no other comments from City Staff, Bang closed the floor to appellee arguments and opened the floor to Board discussion and action. The Board discussed the various appellant arguments. Hearing no further discussion, Bang entertained a motion.

Motion: It was moved by Member Sawyer, and seconded by Member Brown, to approve the variance request which authorizes a reduction in the street yard setback as requested. A roll call vote showed all members present voting aye – the motion carried unanimously.

8. Consider a request of the Dodge County Highway Department, the owner of approximately 9.2 acres located at 2260 Co. Rd. 19, for approval of a Variance to subsection 906.b.1., Fremont Zoning Ordinance, pertaining to Off-Street Parking Design Standards, particularly pavement and drainage.

Chairman Bang read the item into the record. Bang then proceeded to open the floor to appellant arguments. Representative of the appellant, Alan Doll, presented their case, arguing issues relating to pre-existing conditions of the site, surrounding residents and business having similar improvements, neighboring

developments having been granted similar requests, the private nature of the business and funding. Following comments from Mr. Doll, appellant representative Clark Boschult argued organizational operations, City regulations applicable to administrative approvals, and other variances granted.

Hearing nothing further from the appellant, Bang closed the floor to appellant arguments and proceeded to open the floor to public hearing.

Hearing no comments from the public, Bang closed the floor to public hearing and opened the floor to appellee arguments. Planning Director Anderson recommended disapproval as the hardship claimed by the applicant was both self-inflicted and pecuniary.

Hearing no other comments from City Staff, Bang closed the floor to appellee arguments and opened the floor to Board discussion and action. The Board discussed the various appellant arguments. Hearing no further discussion, Bang entertained a motion.

Motion: It was moved by Member Bang, and seconded by Member Sawyer, to approve a modified variance request wherein parking facilities, not including walkways, handicap parking stalls and drive approaches, need not be paved. A roll call vote showed three (3) members voting aye and one (1) member, Member Fooker, voting nay – the motion failed.

9. Adjournment

Hearing no further business, Chairman Bang adjourned the meeting at approximately 6:00 p.m.

APPROVED:

Phil Bang, Chairman

ATTEST:

Troy Anderson, Planning Director

**BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
NOVEMBER 30, 2015 – 4:30 PM**

PRESENT: Chairman, Phil Bang, Members, Scott Brown, and Brad Fooker, and Planning Director, Troy Anderson

ABSENT: Members, Curt Friedrich, and Skip Sawyer

1. Call to Order. Chairman Bang called the meeting to order at 4:30 p.m.
2. Roll Call. A roll call showed three (3) standing members present and two (2) standing members absent – due to a lack of quorum the regularly scheduled meeting of the Board was duly cancelled.

APPROVED:

Phil Bang, Chairman

ATTEST:

Troy Anderson, Planning Director

**BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
DECEMBER 28, 2015 – 4:30 PM**

PRESENT: Members, Scott Brown, Brad Fooker, and Skip Sawyer, and Planning Director, Troy Anderson

ABSENT: Chairman, Phil Bang, and Member, Curt Friedrich

1. Call to Order. In accordance with Article I.2., Board of Adjustment By-Laws, in the absence of both the Chair and Vice-Chair, the Planning Director or their designee shall preside temporarily until such time as a Chair can be selected; Director Anderson called the meeting to order at 4:30 p.m.
2. Roll Call. A roll call showed three (3) standing members present and two (2) standing members absent – due to a lack of quorum the regularly scheduled meeting of the Board was duly cancelled.

APPROVED:

Scott Brown, Member

ATTEST:

Troy Anderson, Planning Director

Staff Report

TO: Board of Adjustment
FROM: Troy Anderson, Director of Planning
DATE: January 25, 2016
SUBJECT: Variance Request – 401 W 23rd St.

Background: Rick Fidler, agent for the owner of approximately 0.7 acres located at 401 W 23rd St., is requesting approval of a variance reducing the street side setback from fifteen (15) feet to nine (9) feet.

The subject property is located at the southwest corner of W 23rd St. and N I St. and is currently zoned CC Community Commercial. Properties to the North, opposite W 23rd St., consist of offices (medical offices in particular), property to the East, opposite N I St., is listed as a cocktail lounge, properties to the South, opposite W 22nd St. are one-family dwellings, and property to the West is identified as multi-family residential.

The owner is proposing a sixteen (16) foot by thirty-six (36) foot addition to an existing retail/convenience market which encroaches into the street yard setback a distance of six (6) feet. According to subsection 703.b., Fremont Zoning Ordinance (FZO), every part of a required yard shall be open and unobstructed from finished grade upward. There are exceptions including architectural projections, including roofs which cover porches, enclosed porches, window sills, belt courses, cornices, eaves, flues and chimneys, and ornamental features which may project three (3) feet into a required yard. (FZO § 703.b.1.) Unfortunately, structural elements more than three (3) feet above or below the adjacent ground level must be set back a distance of twenty (20) feet from any street property line. (FZO § 703.b.2.)

In response to the appellant's letter, attached hereto and incorporate herein, Staff has prepared the following:

- Regarding the size of the property, the subject property consists of approximately thirty-one thousand (31,000) square feet and according to Table 4-3, FZO, only six thousand (6,000) square feet is required for properties located in CC Community Commercial zoning districts. With that being said, according to our calculations, after building setbacks are subtracted there is approximately twenty-two thousand (22,000) square feet of buildable area on the subject property. Also, the minimum lot width for a property located in a CC Community Commercial zoning district is fifty (50) feet. The

subject property has a lot width of no less than one hundred sixteen (116) feet. Therefore the size of the property does not appear to be a hardship.

- Regarding the existing layout of the store, the existing layout of the store is currently legal and in conformance with codes and ordinances of the City and is not a hardship unique to the land in question and may be interpreted as a claim merely for the sake of having a larger building (ref. *Alumni Control Board v. City of Lincoln*).
- Regarding expanded offerings of quality food service products, convenience items and automotive fueling services, limitations in products and services being offered to patrons or clients of the business is not considered a hardship unique to the land in question and may be interpreted as a claim for increased profits which the courts have determined as insufficient for granting a variance (ref. *Bowman, v. City of York*).
- Regarding highest and best use of the property, the highest and best use of the property is not considered a hardship unique to the land in question and may be interpreted as a claim for increased profits which the courts have determined as insufficient for granting a variance (ref. *Bowman, v. City of York*).

Staff recommends disapproval because any hardship claimed by the applicant appears to be either self-inflicted or pecuniary (case law relating to self-inflicted variances and variances relating to increased profits or financial gain are provided at the conclusion of Staff's Report). Also, please be advised that neither a site development permit (i.e. site plan approval) application nor a building permit application has been submitted for the improvements described herein.

Nebraska Revised Statutes relating to the Board of Adjustment and Variances

Nebraska Revised Statutes (NRS) section 19-907 requires the local legislative body [enforcing zoning regulations] to provide for the appointment of a board of adjustment (Board) – any action of which shall not exceed the powers granted to it by the State. NRS section 19-910, and similarly FZO § 129.c., details the powers of the Board as follows:

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property **at the time of the enactment of the zoning regulations**, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict

application of any enacted regulation under this section and sections 19-901, 19-903 to 19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) **No such variance shall be authorized by the board** unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; **and** (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship **as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds** that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with sections 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation. **[emphasis added]**

Subsection 1209.c.2., FZO, continues to read, "The Board of Adjustment shall make findings that the requirements of Section 1209.c.1. have been met by the applicant for a variance." And, subsection 1209.c.3, FZO, "Conditions for Grant of Variance. (a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations and punishable under Section 1214 of these regulations. (b) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district. (c) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands,

structures, or buildings in other districts shall be considered grounds for the issuance of a variance.”

Case Law

In the case of *Frank v. Russell*, the Scottsbluff, Nebraska, Board of Adjustment granted a variance, reducing the building setback from forty (40) feet to twenty-seven (27) feet, to allow for the construction of a residential building. The neighbors appealed the decision to District Court. The District Judge upheld the decision of the Board of Adjustment. The decision was then appealed to the Nebraska Supreme Court. The state supreme court reversed the decision of the lower court, finding the decision “unreasonable and arbitrary” and that the variance was “destructive ... of the spirit of the ordinance.” The court focused specifically on the fact that the owners created their own hardship with knowledge of what the ordinances prohibited – specifically, “It would certainly be unreasonable to allow one to create his own hardship and difficulty and take advantage of it to the prejudice of innocent parties.” The courts also provided the following:

It appears that the rule respecting the right of a board of adjustment, such as the one here, to grant a variance from zoning regulations on the ground of unnecessary hardship **is generally that it may not be granted**: Unless the denial would constitute an unnecessary and unjust invasion of the right of property; **if the grant relates to a condition or situation special and peculiar to the applicant; if it relates only to a financial situation or hardship to the applicant; if the hardship is based on a condition created by the applicant; if the hardship was intentionally created by the owner**; if the variation would be in derogation of the spirit, intent, purpose, or general plan of the zoning ordinance; if the variation would affect adversely or injure or result in injustice to others; or ordinarily if the applicant purchased his premises after enactment of the ordinance. [**emphasis added**]

In the case of *Alumni Control Board v. City of Lincoln*, a fraternity requested a variance that would allow it to construct a larger building than was allowed by the city zoning code and that would allow it to vary off-street parking requirements. The requested variance was denied by the zoning board of appeals, and the district court. The Nebraska Supreme Court affirmed the denial pointing out that the requirements imposed by the code were reasonable, and that granting the variances would “be in derogation of the spirit and intent and general plan of the zoning ordinance.” Ultimately, the court concluded that the “mere fact that the plaintiff would like to have a fraternity house of larger dimensions does not establish practical difficulty in complying with the ordinance.”

In the case of *Bowman, v. City of York*, a company applied for a variance that would allow it to build the rear wall of a warehouse within one foot of the property line that divided its property

from the residential property of the Bowmans, whereas the zoning code required a fifteen foot setback. The board of adjustment granted the variance and the Bowmans appealed. In this case the District Court reversed the granting of the variance and the decision was appealed to the Nebraska Supreme Court. The Supreme Court found that the application of the code would not produce undue hardship. The court also held that the company's sole stated hardship, wanting to increase profits, did not constitute sufficient hardship to justify granting a variance, stating that "it does not provide a basis for riding roughshod over the rights of others by obtaining a variance from zoning regulations with which the rest of the community must live."

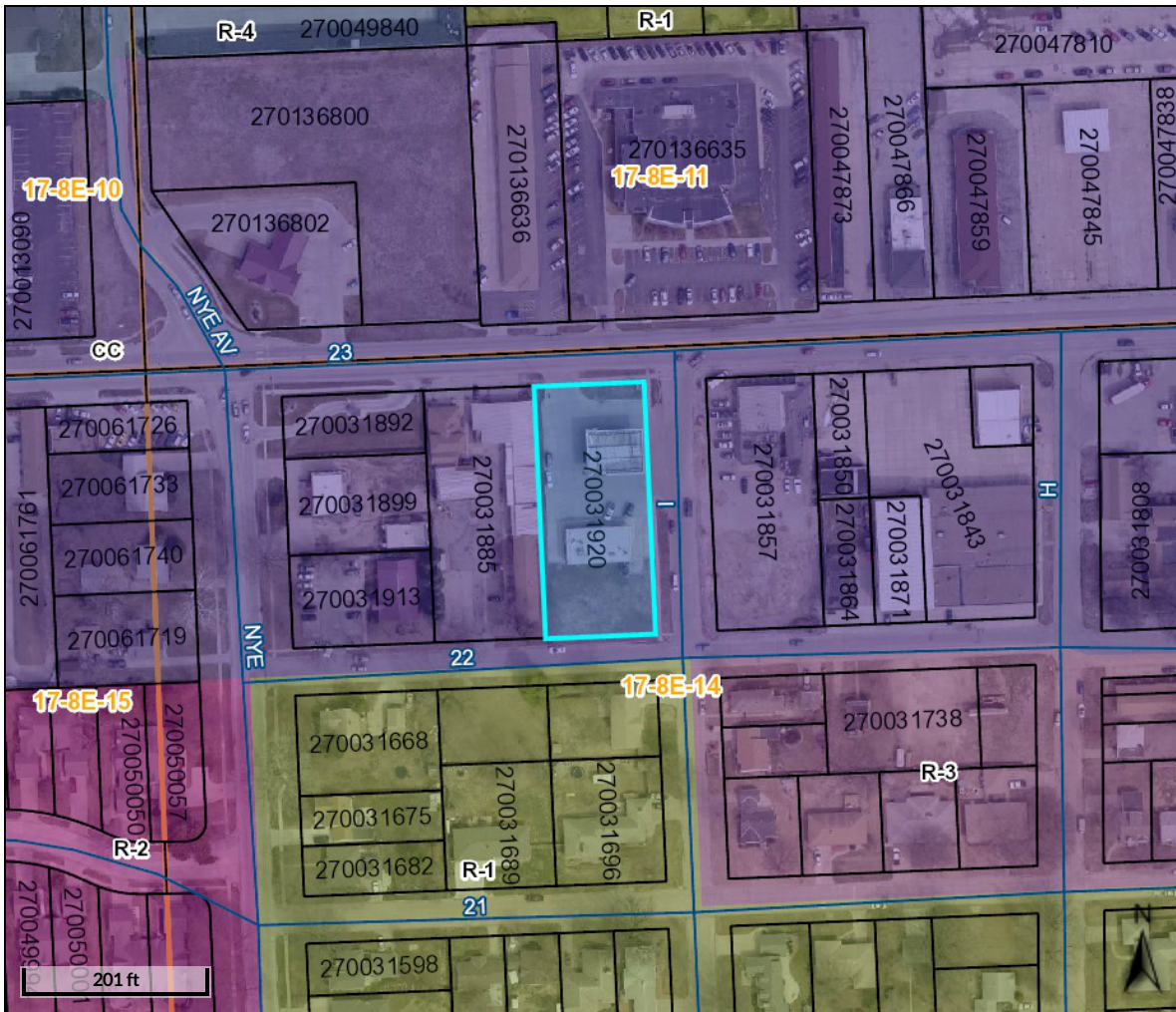
In summary, the Nebraska Supreme Court, as demonstrated herein, has established significant guidance to Boards considering variance requests. First, there is not sufficient hardship when the party seeking the variance created their own hardship, secondly, simply wanting to deviate from zoning regulations does not alone constitute sufficient hardship, and finally, wanting to increase profits does not alone constitute sufficient hardship.

Fiscal Impact: N/A

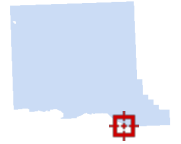


Beacon™

Dodge County, NE



Overview



Legend

Highways

<all other values>

I

LS

N

R

US

Parcels

Sections

Airport

Streets

Zoning

<all other values>

AG

CC

CC/PD

DC

GC

GI

LI

MU

MU / TND

R-1

R-2

R-2/NC

R-3

R-4

R-5

RR

UC

UC/SC

UNKNOWN

Parcel ID 270031920
Sec/Twp/Rng 14-17-8
Property Address 401 W 23RD
FREMONT

Alternate ID 2391-14-2-91522-015-0000
Class Com - Commercial
Acreage n/a

Owner Address CASEY'S RETAIL COMPANY
ONE SE CONVENIENCE BLVD
PO BOX 3001
ANKENY, IA 50021-3001

District 1 - FREMONT CITY
Brief Tax Description HAWTHORNE HEIGHTS PROPOSED 2ND LOTS 1,2,11 & 12 BLK 15



CASEY'S GENERAL STORES, INC.

P.O. Box 3001 • One Convenience Blvd., Ankeny, Iowa 50021-8045 • 515-965-6100

Variance Request
Casey's Retail Company
Fremont, NE

Address: 401 W. 23rd Street, Fremont, NE

Legal Description: Lots 1, 2, 11 and 12, Block 15, Hawthorne Heights Proposed 2nd Addition to the City of Fremont, Dodge County, Nebraska

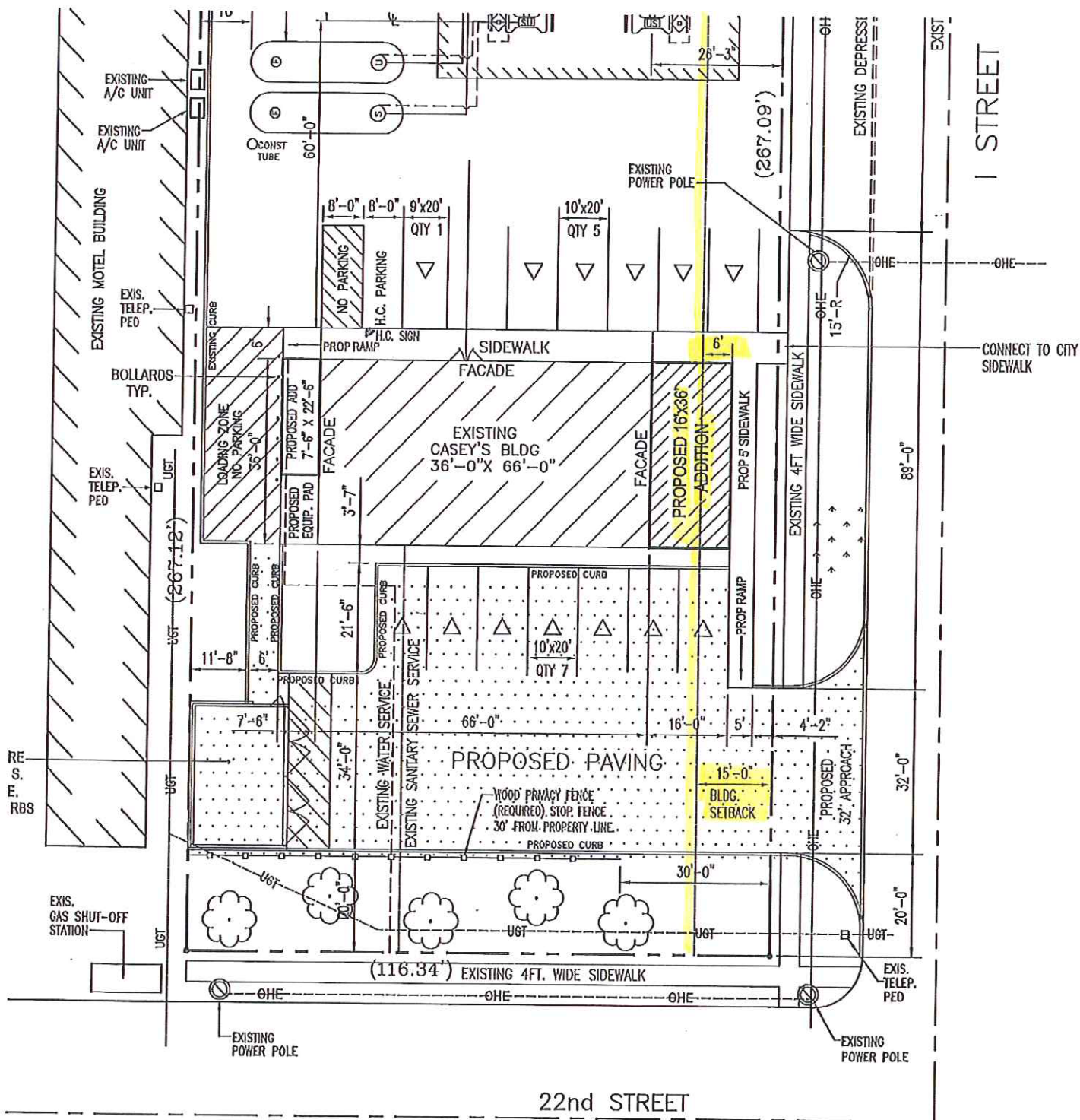
Casey's Retail Company is proposing an addition to the Casey's General Store located at 401 W. 23rd Street in Fremont, Nebraska. The proposed addition is 16'x36' and would be constructed along the East side of the building. The property has a 15' building setback requirement along the East property line that is adjacent to I Street. The proposed addition encroaches the setback requirement by 6'. Due to the size of the property and the existing layout of the store within the property, Casey's is not able to construct the addition to the building within the required setbacks. Accordingly, Casey's is requesting a variance to allow the building addition to be constructed with 9' of the East property line.

The granting of this variance would allow construction of an addition to the existing Casey's General Store. The remodel and addition of the store will allow for expanded offerings of quality food service products, convenience items and automotive fueling services provided by Casey's General Store. This use is not inconsistent with surrounding commercial properties. The proposed construction will make the highest and best use of this commercial property and will not have a negative effect on surrounding properties.

Thank you for the consideration of this variance request. If you have any questions, please contact me at 515-963-3829.

Sincerely,

Katie DeRouchey
Real Estate/Store Development
Casey's Retail Company



Staff Report

TO: Board of Adjustment
FROM: Troy Anderson, Director of Planning
DATE: January 25, 2016
SUBJECT: Variance Request – 1242 S Ridge Rd.

Background: Justin Cash, agent for the owner of approximately 3.9 acres located at 1242 S Ridge Rd., is requesting approval of a variance waiving the architectural requirement for accessory buildings.

The subject property is located at the end of Mary Jo Circle, a private street approximately four hundred (400) feet in length immediately east of Ridge Rd. in the Olmstead Estates Subdivision, and is currently zoned RL Residential Lake. Properties to the North, East, South and West, opposite Ridge Rd., are either one-family dwellings or unimproved lake front property, identified as residential on the Dodge County tax rolls, and are similarly zoned RL Residential Lake.

The owner is proposing construction of a nine hundred eighty-eight (988) square foot detached accessory structure. According to subsection 704.c.1., Fremont Zoning Ordinance (FZO), **“Exterior building materials and architectural designs *used for all accessory buildings over 150 square feet* and detached garage accessory buildings for single-family detached, single-family attached or duplex residential structures *shall be consistent with the character of, or architecturally harmonious with, the existing primary residential structure.*”** Also, subsection 704.c.2, FZO, continues to read, “Exterior materials shall be non-reflective and shall be of a color, material, and scale comparable to existing residential structures in the immediate area. Permanent siding shall be, or simulate, wood, wood shingles, brick, masonry, or tile. The roof shall be pitched with a minimum vertical rise of 2.5 inches for each 12 inches of horizontal run. **Roof construction shall be of non-reflective materials, which either are or simulate the appearance of asphalt, wood shingles, tile, or rock.**” **[emphasis added]**

The primary residential structure, and similarly a detached garage currently erected on the property, are finished with vinyl siding and asphalt shingles. The exterior finishes of the proposed detached accessory structure consist of pre-finished metal panels on both the walls and the roof and are therefore not *consistent with the character of, or architecturally harmonious with, the existing primary residential structure.*

In response to the appellant's letter, attached hereto and incorporate herein, Staff has prepared the following:

- Just for clarification, the subject property is zoned RL Residential Lake rather than RR Rural Residential as suggested by the appellant.
- Regarding the lack of neighbors, or more generally the lack of visibility, NRS 19-910 limits power of the Board to (a) enforcement errors, (b) map interpretations, or (3) hardships relating to exceptional narrowness, shallowness, shape, or topography of the land; whether or not the building can be seen is not a hardship that does not afford the property owner the opportunity to comply with codes and ordinances of the City.
- Regarding exposure and extreme weather elements, the International Residential Code (IRC) [c. 2012] requires all building located in eastern Nebraska, and the Midwest in general, to be designed to withstand ninety (90) mile per hour wind speeds with coefficients for various exposure categories; there is no evidence to suggest that the use of vinyl siding and/or asphalt shingles will compromise compliance with these design requirements.

Staff recommends disapproval because any hardship claimed by the applicant appears to be either self-inflicted or pecuniary (case law relating to self-inflicted variances and variances relating to increased profits or financial gain are provided at the conclusion of Staff's Report). Also, please be advised that a building permit application has not been submitted for the improvements described herein.

Nebraska Revised Statutes relating to the Board of Adjustment and Variances

Nebraska Revised Statutes (NRS) section 19-907 requires the local legislative body [enforcing zoning regulations] to provide for the appointment of a board of adjustment (Board) – any action of which shall not exceed the powers granted to it by the State. NRS section 19-910, and similarly FZO § 129.c., details the powers of the Board as follows:

(1) The board of adjustment shall, subject to such appropriate conditions and safeguards as may be established by the legislative body, have only the following powers: (a) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for interpretation of any map; and (c) when by reason of exceptional narrowness, shallowness, or shape of a specific piece of property **at the time of the enactment of the zoning regulations**, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this section and sections 19-901, 19-903 to

19-904.01, and 19-908 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(2) **No such variance shall be authorized by the board** unless it finds that: (a) The strict application of the zoning regulation would produce undue hardship; (b) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; (c) the authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; **and** (d) the granting of such variance is based upon reason of demonstrable and exceptional hardship **as distinguished from variations for purposes of convenience, profit, or caprice. No variance shall be authorized unless the board finds** that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(3) In exercising the powers granted in this section, the board may, in conformity with sections 19-901 to 19-915, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variation in such regulation. **[emphasis added]**

Subsection 1209.c.2., FZO, continues to read, "The Board of Adjustment shall make findings that the requirements of Section 1209.c.1. have been met by the applicant for a variance." And, subsection 1209.c.3, FZO, "Conditions for Grant of Variance. (a) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with these regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations and punishable under Section 1214 of these regulations. (b) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of these regulations in the district involved, or any use expressly or by implication prohibited by the terms of these regulations in said district. (c) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted or non-conforming use of lands,

structures, or buildings in other districts shall be considered grounds for the issuance of a variance.”

Case Law

In the case of *Frank v. Russell*, the Scottsbluff, Nebraska, Board of Adjustment granted a variance, reducing the building setback from forty (40) feet to twenty-seven (27) feet, to allow for the construction of a residential building. The neighbors appealed the decision to District Court. The District Judge upheld the decision of the Board of Adjustment. The decision was then appealed to the Nebraska Supreme Court. The state supreme court reversed the decision of the lower court, finding the decision “unreasonable and arbitrary” and that the variance was “destructive ... of the spirit of the ordinance.” The court focused specifically on the fact that the owners created their own hardship with knowledge of what the ordinances prohibited – specifically, “It would certainly be unreasonable to allow one to create his own hardship and difficulty and take advantage of it to the prejudice of innocent parties.” The courts also provided the following:

It appears that the rule respecting the right of a board of adjustment, such as the one here, to grant a variance from zoning regulations on the ground of unnecessary hardship **is generally that it may not be granted:** Unless the denial would constitute an unnecessary and unjust invasion of the right of property; **if the grant relates to a condition or situation special and peculiar to the applicant; if it relates only to a financial situation or hardship to the applicant; if the hardship is based on a condition created by the applicant; if the hardship was intentionally created by the owner;** if the variation would be in derogation of the spirit, intent, purpose, or general plan of the zoning ordinance; if the variation would affect adversely or injure or result in injustice to others; or ordinarily if the applicant purchased his premises after enactment of the ordinance. [**emphasis added**]

In the case of *Alumni Control Board v. City of Lincoln*, a fraternity requested a variance that would allow it to construct a larger building than was allowed by the city zoning code and that would allow it to vary off-street parking requirements. The requested variance was denied by the zoning board of appeals, and the district court. The Nebraska Supreme Court affirmed the denial pointing out that the requirements imposed by the code were reasonable, and that granting the variances would “be in derogation of the spirit and intent and general plan of the zoning ordinance.” Ultimately, the court concluded that the “mere fact that the plaintiff would like to have a fraternity house of larger dimensions does not establish practical difficulty in complying with the ordinance.”

In the case of *Bowman, v. City of York*, a company applied for a variance that would allow it to build the rear wall of a warehouse within one foot of the property line that divided its property

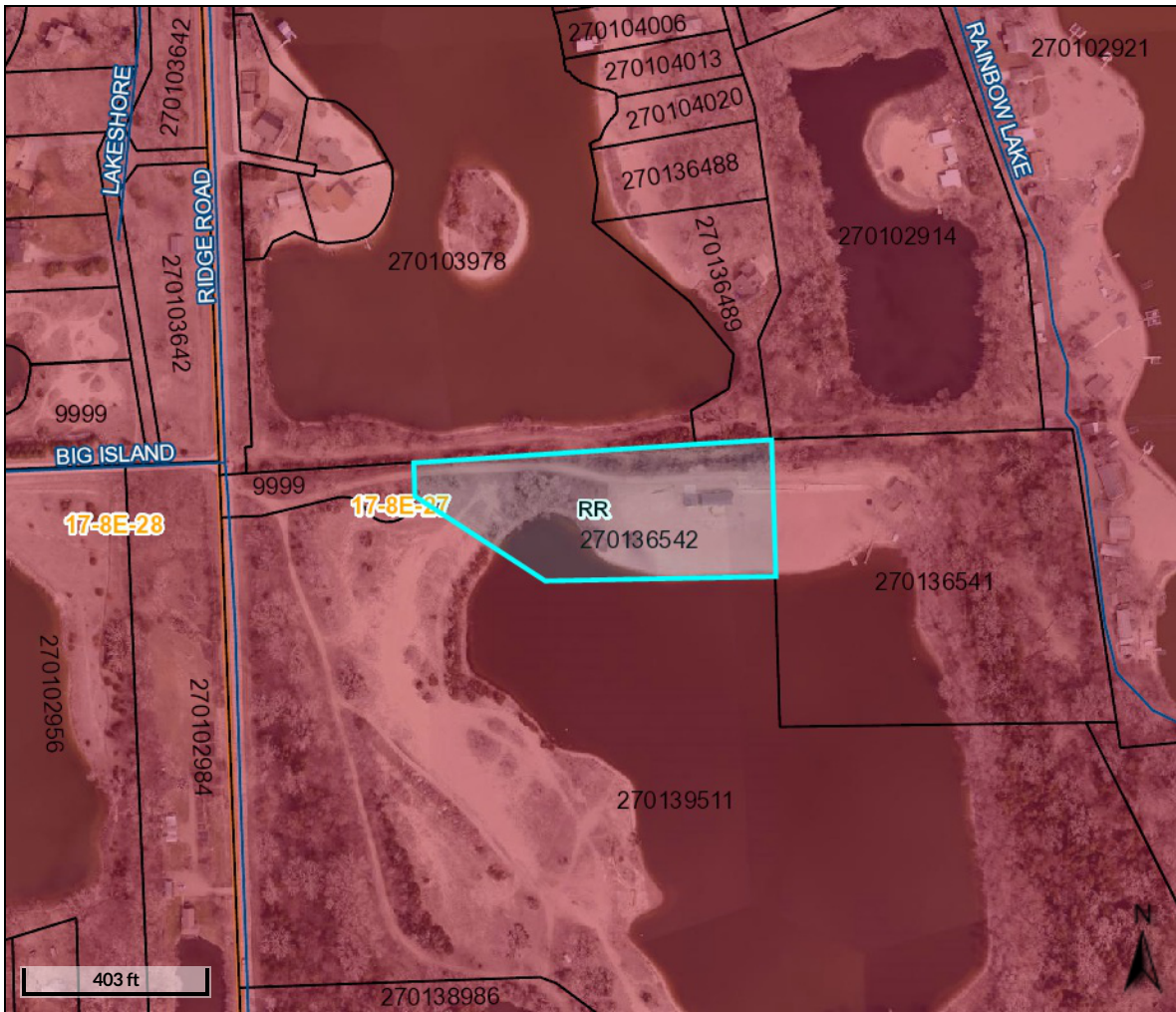
from the residential property of the Bowmans, whereas the zoning code required a fifteen foot setback. The board of adjustment granted the variance and the Bowmans appealed. In this case the District Court reversed the granting of the variance and the decision was appealed to the Nebraska Supreme Court. The Supreme Court found that the application of the code would not produce undue hardship. The court also held that the company's sole stated hardship, wanting to increase profits, did not constitute sufficient hardship to justify granting a variance, stating that "it does not provide a basis for riding roughshod over the rights of others by obtaining a variance from zoning regulations with which the rest of the community must live."

In summary, the Nebraska Supreme Court, as demonstrated herein, has established significant guidance to Boards considering variance requests. First, there is not sufficient hardship when the party seeking the variance created their own hardship, secondly, simply wanting to deviate from zoning regulations does not alone constitute sufficient hardship, and finally, wanting to increase profits does not alone constitute sufficient hardship.

Fiscal Impact: N/A

**Beacon**TM

Dodge County, NE

**Overview****Legend****Highways**

<all other values>

I

LS

N

R

US

Parcels

Sections

Airport

Streets

Zoning

<all other values>

AG

CC

CC/PD

DC

GC

GI

LI

MU

MU / TND

R-1

R-2

R-2/NC

R-3

R-4

R-5

RR

UC

UC/SC

UNKNOWN

Parcel ID	270136542	Alternate ID	2391-39-2-00000-000-0019
Sec/Twp/Rng	27-17-8	Class	Res - Residential
Property Address	1242 S RIDGE RD	Acreage	3.86
District	236 - PLATTE 1-8-P		
Brief Tax Description	OLMSTEAD ESTATES LOT 13.86A 27 17 8		
(Note: Not to be used on legal documents)			

Owner Address	CASH, ASHLEY LYNN
	1242 S RIDGE RD
	FREMONT, NE 68025

APPEAL/EXCEPTION/VARIANCE APPLICATION

APPLICATION TYPE

- ☐ Administrative Appeal
☐ Special Exception (including interpretation of any map)
☒ Variance

APPLICANT (all correspondence will be directed to the applicant)

Name Justin Cash Phone 402-719-4252
Address 1242 S. Ridge Rd. Fax _____
City Fremont State NE Zip 68025
Email JustinCash24@yahoo.com

PROPERTY OWNER (if not the same as applicant above)

Name Justin & Ashley Cash Phone _____
Address _____ Fax _____
City _____ State _____ Zip _____
Email _____

ENGINEER, SURVEYOR, OR ARCHITECT (if not the same as applicant above)

Name Dan Martinez Phone 402-720-9339
Address 125 N. Clarmar Fax _____
City Fremont State NE Zip 68025
Email danm.surveying@gmail.com

AGENT (if not the same as applicant above)

Name _____ Phone _____
Address _____ Fax _____
City _____ State _____ Zip _____
Email _____

(application continued on next page)

APPEAL/EXCEPTION/VARIANCE APPLICATION

PROPERTY INFORMATION

Address of Property 1242 S. Ridge Rd.
General Location (if no address is available) _____

Brief Legal Description of Property 3.86 Acres of lakefront property with a ranch home and detached garage.

Description of Request (the following does not satisfy the "statement" requirement as described herein; a separate "statement" is required to be considered complete) To put up a metal accessory building approximately 50' west of my garage on our deeded lot 1 of Olmstead estates.

An application may be filed only by the owner(s) of the property, or duly authorized officer or agent of the owner(s). By executing this application, he/she does hereby acknowledge the above statements to be true and accurate to the best of their knowledge, and understand that knowing and willful falsification of information will result in rejection of the application and may be subject to criminal prosecution.

I have received, read and understand the terms and conditions of this request, and agree to compliance with all applicable codes and ordinances of the City.

[Signature] Justin Cast 12-30-15
Signature Print Name Date

Office Use Only

Submittal Date _____ Project No. _____
Payment Amount _____ Receipt No. _____
Other Comments _____

NEBRASKA DOCUMENTARY STAMP TAX

OCTOBER 3, 2012

By: CG

\$ E-18



201205337

Carol Givens
Carol GivensRegister of Deeds
DODGE COUNTY, NE

201205337

Filed:

October 03, 2012 10:50:00 AM

Fee \$5.50

TRUSTEE TO BENEFICIARY

Return to:
Ashley Lynn Cash
1240 S. Ridge Road
Fremont, NE 68025

TRUSTEE'S DEED

MICHAEL J. OLMSTEAD and PATRICK J. OLMSTEAD, Successor Trustees of the Mary Jo Olmstead Trust dated March 1, 2003, GRANTOR, in consideration of One Dollar and Other Valuable Consideration received from GRANTEE, ASHLEY LYNN CASH, conveys to GRANTEE, the following described real estate (as defined in Neb. Rev. Stat. 76-201):

Lot One (1), of Olmstead Estates, a subdivision platted and recorded in Section Twenty-seven (27), Township Seventeen (17) North, Range Eight (8), East of the 6th P.M., Dodge County, Nebraska

subject to easements and restrictions of record.

GRANTOR covenants with GRANTEE that GRANTOR:

- (1) is lawfully seized of such real estate and that it is free from encumbrances except those of record;
- (2) has legal power and lawful authority to convey the same;
- (3) warrants and will defend title to the real estate against any acts of the GRANTOR.

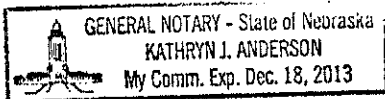
Executed 9-28-12, 2012.

Michael J. Olmstead
MICHAEL J. OLMSTEAD, Successor Trustee

Patrick J. Olmstead
PATRICK J. OLMSTEAD, Successor Trustee

STATE OF NEBRASKA)
COUNTY OF Dodge)SS.

The foregoing instrument was acknowledged before me on Sept 28, 2012 by MICHAEL J. OLMSTEAD, Successor Trustee.

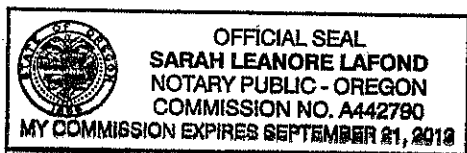


Kathryn J. Anderson
Notary Public

Oregon
STATE OF NEBRASKA)
COUNTY OF Benton)SS.

The foregoing instrument was acknowledged before me on October 1, 2012 by PATRICK J. OLMSTEAD, Successor Trustee.

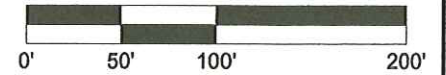
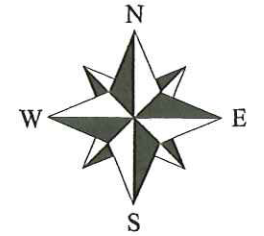
Sarah L. Lafond
Notary Public



PAGE 1 OF 1 PAGE

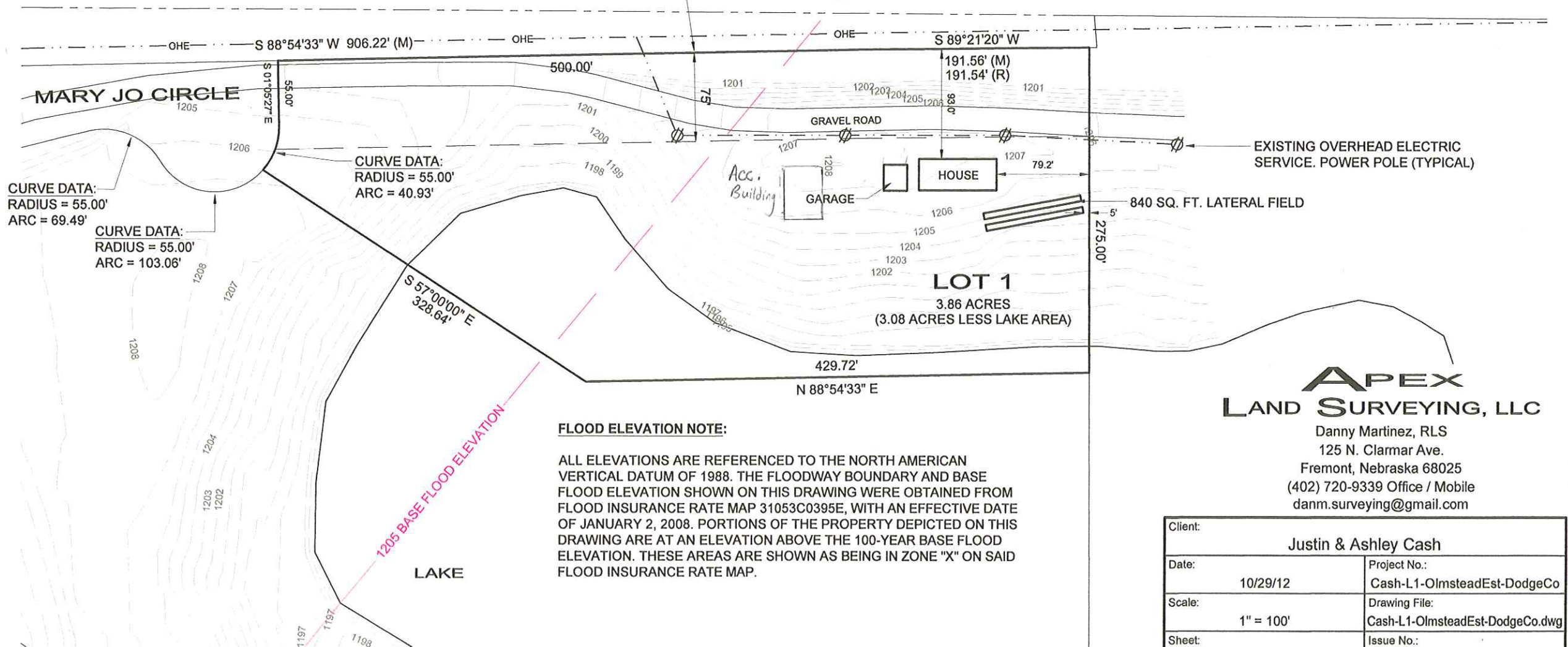
PROPOSED SITE PLAN

LOT 1, OLMSTEAD ESTATES
SECTION 27, TOWNSHIP 17 NORTH, RANGE 8 EAST
OF THE SIXTH P.M., DODGE COUNTY, NEBRASKA



SCALE: 1" = 100'

EXISTING 75' WIDE INGRESS AND EGRESS EASEMENT,
RECORDED IN DEED BOOK 2000, PAGE 4244.



APEX
LAND SURVEYING, LLC

Danny Martinez, RLS
125 N. Clamar Ave.
Fremont, Nebraska 68025
(402) 720-9339 Office / Mobile
danm.surveying@gmail.com

Client:		Justin & Ashley Cash	
Date:	10/29/12	Project No.:	Cash-L1-OlmsteadEst-DodgeCo
Scale:	1" = 100'	Drawing File:	Cash-L1-OlmsteadEst-DodgeCo.dwg
Sheet:	1 of 1	Issue No.:	1



QUALITY STRUCTURES, INC.

STANDARD BUILDING PLANS

Construction Services Provided by:

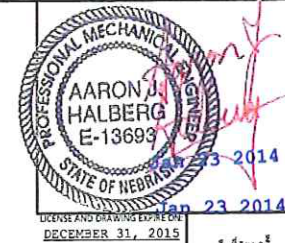


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HALBERG ENGINEERING LLC
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Quality Structures Inc. - Standard Building Design Assumptions:

These conditions have been assumed for any building constructed using the Standard Building Drawings:

Design Wind Speed =	90 mph
Wind Exposure =	C
Occupancy Category =	I - Suitable for buildings used for storage, agricultural or similar use; not normally occupied by people
Truss Loading (psf) =	20-5-10 (35 total). The 20 psf Live Load included in this design would be suitable for Ground Snow Load Values (Pg) up to 35 psf.
Soil Type for Embedded Posts =	3 Firm Soil with base vertical pressure of 3,000 psf (used in accordance with ASAE EP 486.1, including allowable increases) Type 3 material includes Sandy Gravel and/or Gravel
Lateral Resistance System =	Steel Diaphragm Building (through-fastener applied) with supplemental Wind Braces to resist wind load
Building Enclosure Type =	Enclosed (Excludes "Open"/pavilion and "Partially Enclosed" 3-sided "wind-sock" buildings)

Variables considered and allowable values:

Building Width	up to 60'	Horizontal Measurement to outside of Girts on opposite sidewalls
Building Length	up to 120'	Horizontal Measurement to outside of Girts on opposite endwalls
Clear Height	up to 16'-1"	Vertical Measurement from finished grade to bottom of the truss. Limited to 12'-1" for Studwall Buildings.
Lean Types	Open/Enclosed	Either type allowed on each sidewall
Overhang at Eaves	With/Without	12" overhang option or none
Foundation Type	Embedded Posts or Slab	Concrete Slab on grade is optional for embedded post foundations

INDEX		
PAGE	CONTENTS	TABLES
1	COVER SHEET, GENERAL NOTES	
2	FLOOR PLAN	
3	BUILDING ELEVATIONS	
4	POSTFRAME BLDG SECTIONS	4A TRUSS GIRDERS
5	LEAN-TO DETAILS	5A EAVE GIRDER AND RAFTERS 5B COLUMNS FOR SIDEWALLS W/LEANS 5C FOOTINGS FOR SIDEWALLS W/LEANS
6	LARGE DOOR HEADER FRAMING	6A SIDEWALL HEADER SCHEDULE 6B COLUMN SIZES AT SIDEWALL HEADER 6C FOOTING SIZES AT SIDEWALL HEADER
7	FOUNDATION & OTHER DETAILS	
8	STUDWALL BLDGS, TRUSSES 4'o/c	8A TRUSS TIE-DOWN CONNECTORS 8B SIDEWALL HEADERS & SUPPORT STUDS
9	STUDWALL BLDGS, TRUSSES 2'o/c	9A TRUSS TIE-DOWN CONNECTORS 9B SIDEWALL HEADERS & SUPPORT STUDS

NOTE:

CONSTRUCTION DRAWINGS INCLUDED IN THIS PACKAGE REFERENCE TABLES AND DETAILS FOR VARIOUS INFORMATION LOCATED ELSE. THE TABLES AND DETAILS ARE REFERENCED THROUGHOUT THE DRAWINGS AS FOLLOWS:

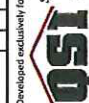
TABLE 4A — a - LETTER REFERS TO A SPECIFIC TABLE ON THAT PAGE

— 4 - REFERS TO A TABLE LOCATED ON PAGE 4 (IN THIS CASE)

1 — 1 - REFERS TO A DETAIL NUMBER UNIQUE TO A GIVEN PAGE
3 — 3 - REFERS TO THE PAGE NUMBER THAT THE DETAIL IS ON

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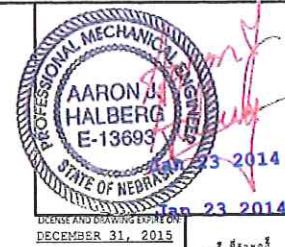
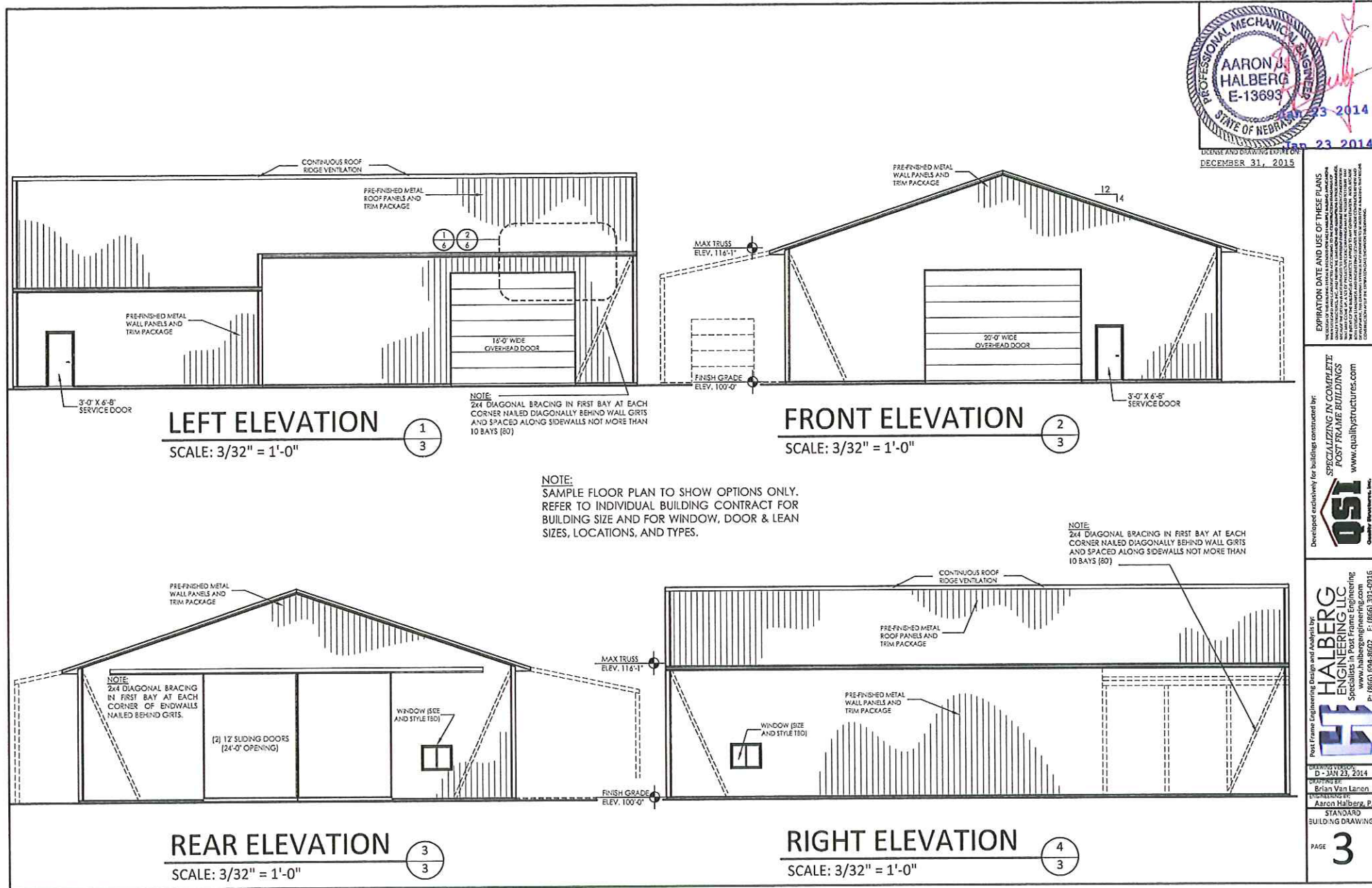
EXPIRATION DATE
0 - JAN 23, 2014

DESIGNED BY
Brian Van Lencen

ENGINEERED BY
Aaron Halberg, P.E.

STANDARD
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PAGE
1



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DESIGNED BY:
 D - JAN 23, 2014
 DRAWING BY:
 Brian Van Lenn
 CHECKED BY:
 Aaron Halberg, P.E.
 STANDARD
 BUILDING DRAWINGS
 PAGE **3**

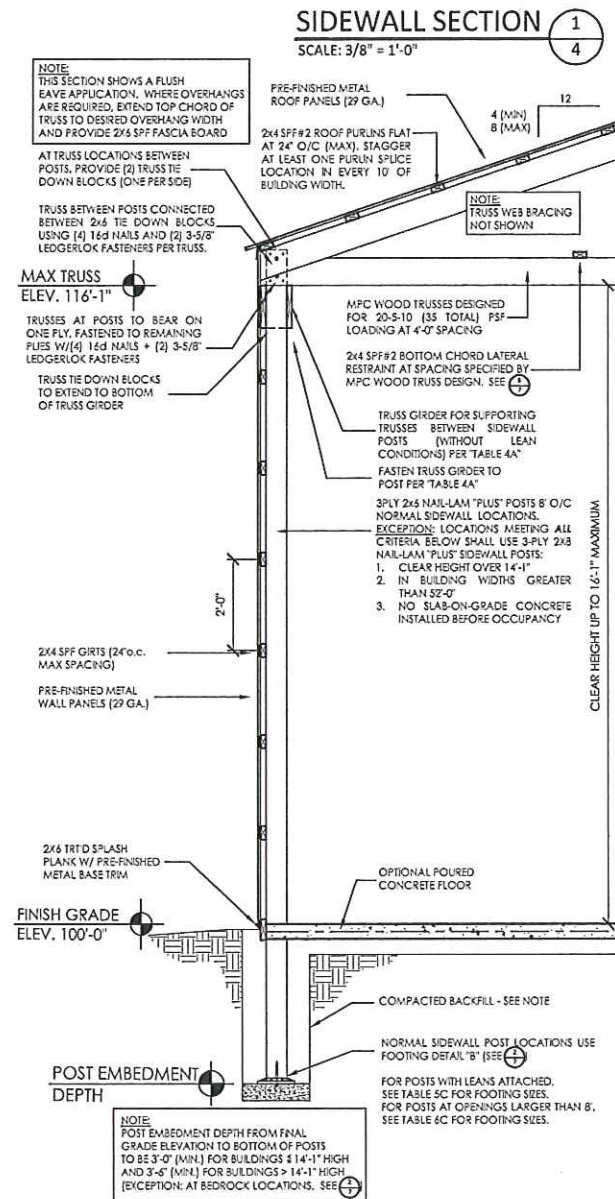
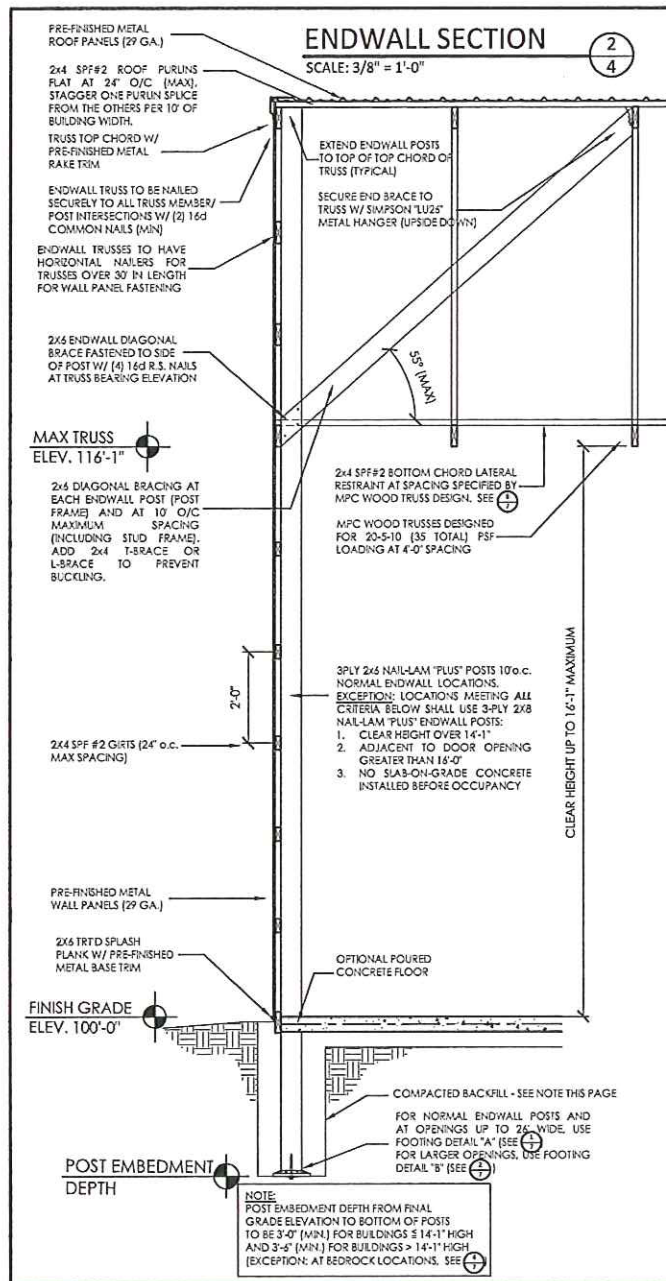


TABLE 4A

TRUSS GIRDER BASED ON BUILDING WIDTH				
16'-20'	22'-32'	34'-42'	44'-54'	56'-60'
2Ply 2x8 (3)	2Ply 2x10 (4)	2Ply 2x12 (5)	3Ply 2x10 (4)	3Ply 2x12 (5)

(a) = Qty of Ledgerlok Fasteners, 3-5/8" long (Part # LL358) into post. When a 3Ply Girder is required, notch the 3rd ply into one side of the posts for direct bearing and use 5" LedgerLoks (# LL005) to secure the side with the doubled-up girder to the post

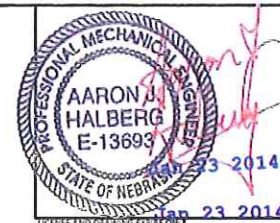
Girder material shown is Hem Fir #2. Splice the interior Girder ply on different posts than the exterior ply. At splices, place 1/2 of the required fasteners into the end of each Girder.

Post Frame Backfill and Post Frame Foundations:

To achieve proper POST to soil interaction, any backfill material used must be compacted to at least 85% of the density of the surrounding soil. Compact all backfill by tamping layers no greater than 8" in thickness. In general, excavated soil can be used for backfill as long as it is compacted to at least its pre-excavation density and free of organic material and construction debris.

Replacing excavated material with a gravel or well-graded sand may be necessary where greater soil strength and stiffness are needed. In the case of holes drilled in clay soil, it is not recommended to backfill with coarse granular backfill in an effort to reduce frost heave. Drilling holes in clay soils and backfilling with a coarse-grained soil turns every post-hole into a sump pit that traps and holds water. This leaves the backfill in a saturated state which is more susceptible to frost-heave than if clay soils are used to properly backfill the holes.

Building in organic silts, soft clays or peat containing soils is never recommending as these soils are either weak or inherently unstable. Extra caution should be taken when evaluating strength properties of soils with variable characteristics, composition, and moisture content throughout the building site. If soil properties present at the building site or selection of backfill material causes any doubt about the long term building performance, seek specific advice from a qualified soil technician or Post Frame engineer, or both.



DECEMBER 31, 2015

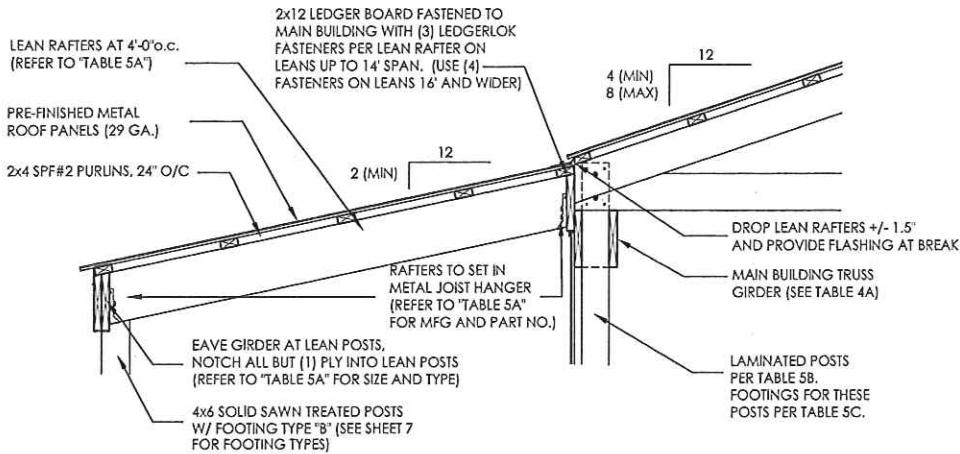
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DATE: JAN 23, 2014
DRAWN BY: Brian Van Lanen
CHECKED BY: Aaron Halberg, P.E.
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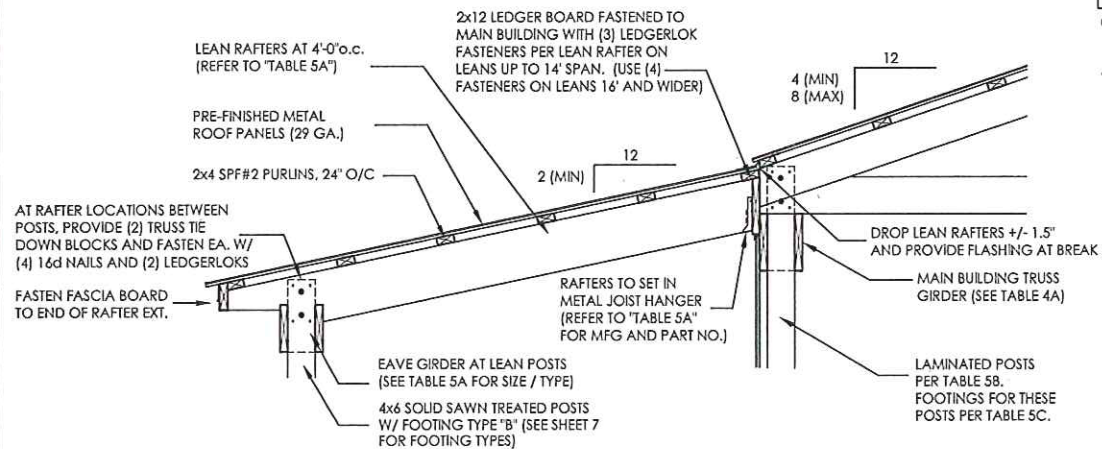
PAGE **4**



LEAN-TO W/ FLUSH EAVE

SCALE: 1/2" = 1'-0"

1
5



LEAN-TO W/ 12" OVERHANG

SCALE: 1/2" = 1'-0"

2
5

TABLE 5A

Width of Lean (ft)	Eave Girder at Lean Posts		Lean Rafter	
	8' Lean Post Spacing	12' Lean Post Spacing	All Rafters 4' o/c	Rafter Hanger
8	Dbl. 2x8 HF#2 (2)	Dbl. 2x8 HF#2 (2)	2x8 HF#2	LSU26
10	Dbl. 2x10 HF#2 (2)	Dbl. 2x10 HF#2 (3)	2x10 HF#2	LSSU28
12	Dbl. 2x12 HF#2 (3)	Dbl. 2x12 HF#2 (3)	2x12 HF#2	LSSU210
14	Dbl. 2x10 HF#2 (3)	Dbl. 2x10 HF#2 (3)	Dbl. 2x10 HF#2	LSSU210-2
16	Dbl. 2x10 HF#2 (3)	Dbl. 2x12 HF#2 (3)	Dbl. 2x10 HF#2	LSSU210-2
18	Dbl. 2x12 HF#2 (4)	Dbl. 2x12 HF#2 (4)	Dbl. 2x12 HF#2	LSSU210-2
20	Dbl. 2x12 HF#2 (4)	3Ply 2x12 HF#2 (4)	11-7/8\" LVL	LSSU125

(#) Indicates the number of 3-5/8\" LedgerLok fasteners required from each girder to post connection. When securing 2Ply Girder to one side of a post, notch one of the plies into the post and use 5\" long LedgerLok fasteners.

TABLE 5B

Clear Height	Lean Size	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54	56	58	
Up to 12'-1"	8ft - 20ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
	8ft - 16ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
	18 ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	
	20 ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	4	
Up to 16'-1"	8 ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4
	10 ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4
	12 ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4
	14 ft Lean	3	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4
	16 ft Lean	3	3	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4	4
	18 ft Lean	3	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4	4	4	4
	20 ft Lean	3	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
	20 ft Lean	3	3	3	3	3	3	3	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4

Column Size Key:

3Ply 2x6: 3
4Ply 2x6 (or 3Ply 2x8): 4

Legend:

For building post solutions where the selection is shaded and where a concrete floor will be installed BEFORE the building is occupied or used, the 3Ply 2x6 post may be used.

*Opposite sidewall uses normal column size unless a 2nd lean is on that side.

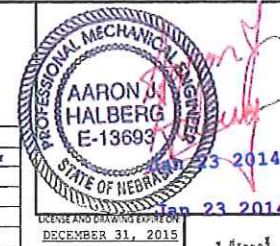
TABLE 5C

		Main Building Width [ft]																						
Size of Lean Attached	Normal Sidewall	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54	56	58	60
		B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	8 ft Lean	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	10 ft Lean	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	12 ft Lean	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	14 ft Lean	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	16 ft Lean	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	18 ft Lean	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	20 ft Lean	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B

Footing Size Key:

B 10\" Footing Pad, 18\" hole, & 1 Bag Concrete Mix - See

C 10\" Footing Pad, 24\" hole, & 2 Bags of Concrete Mix - See



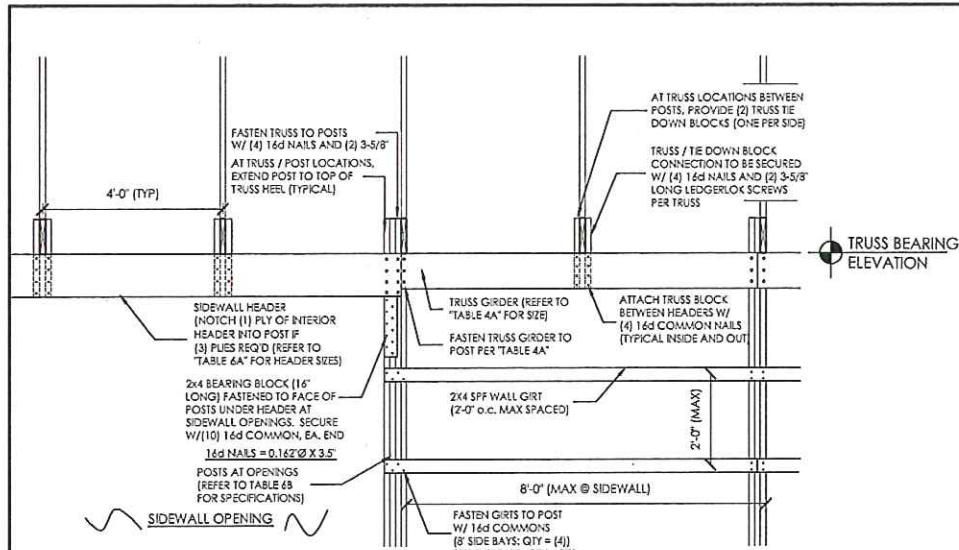
EXPIRATION DATE AND USE OF THESE PLANS
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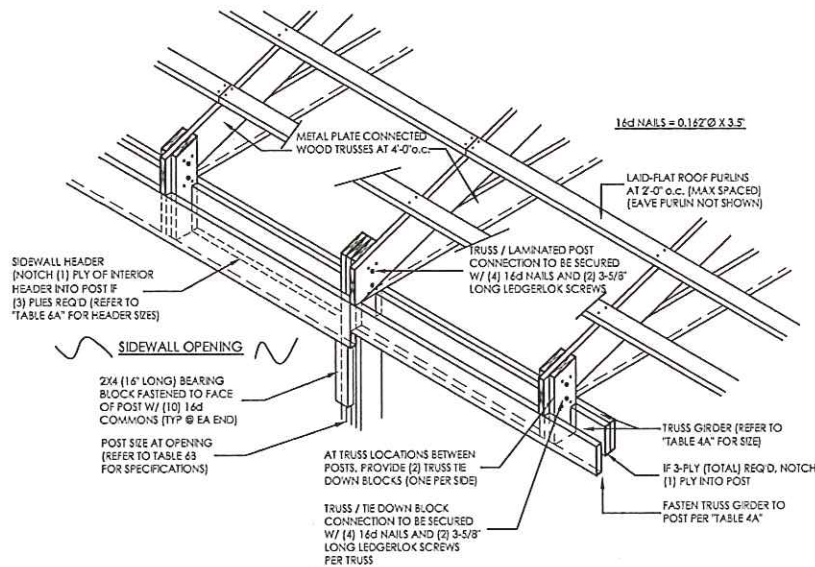
DESIGNED BY:
D - JAN 23, 2014
CHECKED BY:
BRIAN VAN LAMEN
VERIFIED BY:
AARON HALBERG, P.E.
STANDARD
BUILDING DRAWINGS

PAGE
5



SIDEWALL HEADER 1
SCALE: 3/8" = 1'-0"

SIDEWALL FRAMING 2
SCALE: 3/8" = 1'-0"



ISOMETRIC WALL FRAMING DETAIL 3
SCALE: 1/2" = 1'-0"

TABLE 6A

Sidewall Header Schedule	Building Width					
	16' - 20'	22' - 28'	30' - 36'	38' - 44'	46' - 52'	54' - 60'
9'	2Ply 2x10 (3)	2Ply 2x12 (3)	3Ply 2x10 (3)	3Ply 2x12 (3)	2Ply 9-1/2 (4)	2Ply 9-1/2 (5)
10'	2Ply 2x12 (3)	3Ply 2x10 (3)	3Ply 2x12 (3)	2Ply 9-1/2 (3)	2Ply 9-1/2 (5)	2Ply 11-7/8 (6)
12'	3Ply 2x10 (3)	3Ply 2x12 (3)	2Ply 9-1/2 (3)	2Ply 9-1/2 (4)	2Ply 11-7/8 (6)	2Ply 11-7/8 (7)
14'	3Ply 2x12 (3)	2Ply 9-1/2 (3)	2Ply 11-7/8 (4)	2Ply 11-7/8 (5)	2Ply 14 (7)	2Ply 14 (9)
16'	2Ply 9-1/2 (3)	2Ply 11-7/8 (3)	2Ply 11-7/8 (4)	2Ply 14 (6)	2Ply 14 (8)	2Ply 16 (10)
18'	2Ply 11-7/8 (3)	2Ply 11-7/8 (3)	2Ply 14 (5)	2Ply 16 (7)	2Ply 16 (10)	2Ply 18 (12)
20'	2Ply 11-7/8 (3)	2Ply 14 (4)	2Ply 16 (6)	2Ply 18 (8)	2Ply 18 (11)	3Ply 16 (13)
24'	2Ply 14 (3)	2Ply 16 (5)	2Ply 18 (8)	3Ply 16 (11)	3Ply 16 (13)	3Ply 18 (16)

Headers in shaded area are Hem Fir #2 & Better. Other headers are 1-3/4" LVL by BroadSpan (2.0E-3100Fb)

(#) = Quantity of LedgerLok Fasteners at each end of each header, normally 3-5/8" Long (Part # LL358). When a 3Ply Header is called for, notch the 3rd ply into one side of the posts (for direct bearing) and use 5" LedgerLok Fasteners (Part # LL005) to secure the 2 plies on that side of the post. All headers require a 2x4 bearing block with (10) 16d Common (0.162" x 3.5" long) Nails under each end of the header plies (see framing detail).

Clear Height	Opening Size	Main Building Width (ft)																																	
		16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54	56	58	60											
Up to 12'-1"	9ft - 18ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	20 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	24 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	9ft - 10ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
Up to 14'-1"	12 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	14 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	16 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	18 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	20 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	24 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
Up to 16'-1"	9 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	10 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	12 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	14 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	16 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	18 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	20 ft Door	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36	36
	24 ft Door	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	38	48

Column Size Key:

3Ply 2x6: 36
3Ply 2x8: 38
4Ply 2x8: 48

Legend:

38 Shaded selections indicate a column size that can be decreased one size IF a concrete floor will be installed BEFORE occupancy

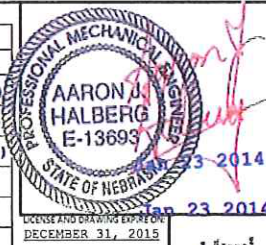
TABLE 6C

Sidewall Footings

		Main Building Width (ft)																												
		16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54	56	58	60	62	64	66	68	70	
Sidewall Opening	Normal Sidewall	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	9 ft Door	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	10 ft Door	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	12 ft Door	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	14 ft Door	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	16 ft Door	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	18 ft Door	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
	20 ft Door	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
		B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B

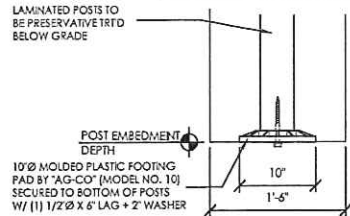
Footings Size Key:

B 10" Footing Pad, 18" hole, & 1 Bag Concrete Mix - See
C 10" Footing Pad, 24" hole, & 2 Bags of Concrete Mix - See



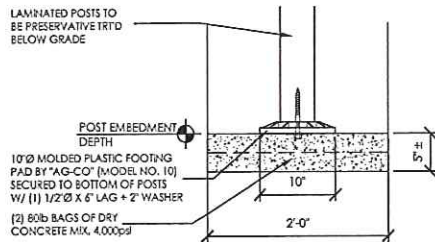
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NOTE:
POST EMBEDMENT DEPTH FROM FINAL GRADE ELEVATION TO BOTTOM OF POSTS TO BE 3'-0" (MIN.) FOR BUILDINGS ≤ 14'-1" HIGH AND 3'-5" (MIN.) FOR BUILDINGS > 14'-1" HIGH (EXCEPTION: AT BEDROCK LOCATIONS, SEE 4)



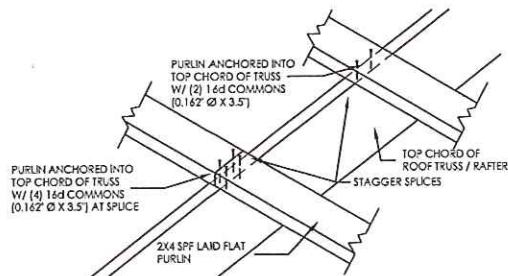
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SCALE: 3/4" = 1'-0"



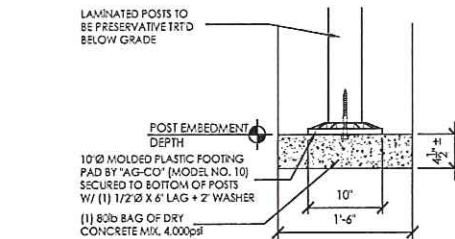
EMBEDDED FOOTING TYPE "C"

SCALE: 3/4" = 1'-0"



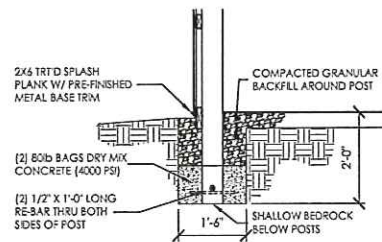
TYP. PURLIN TO TRUSS

SCALE: 3/4" = 1'-0"



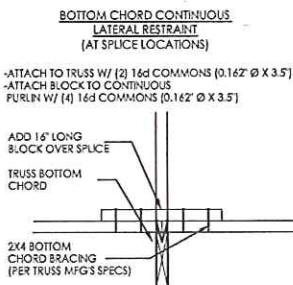
EMBEDDED FOOTING TYPE "B"

SCALE: 3/4" = 1'-0"



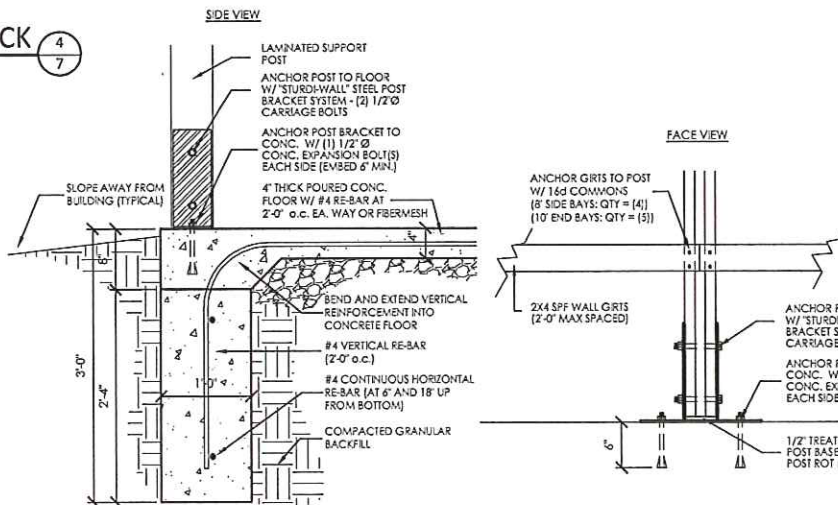
SHALLOW POST AT BEDROCK

SCALE: 3/8" = 1'-0"



LATERAL RESTRAINT TO TRUSS

SCALE: 3/4" = 1'-0"

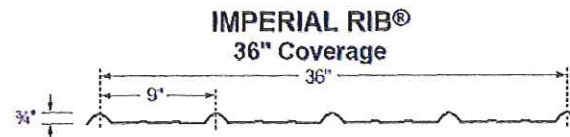


STEEL BRACKET TO FOOTING

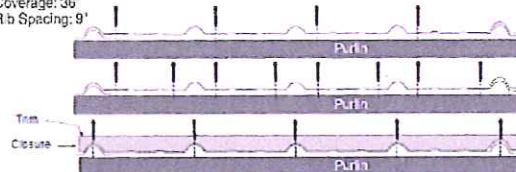
SCALE: 3/4" = 1'-0"

DIAPHRAGM DETAILS

SCALE: none



IMPERIAL RIB®
Panel Coverage: 36"
Major Rib Spacing: 9"

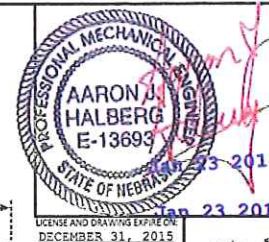


Typical fastener placement at intermediate purlins
Typical fastener placement at end purlins and eave strut
Typical fastener placement at ridge

Images depict fastener pattern for roof steel to purlins, but the same pattern also applies to wall sheathing fastened to girts and for all metal panels fastened to wood sheathing (OSB or Plywood). When fastening metal panels to wood sheathing, the maximum distance between fastener rows is 24".

Metal roof and wall panels fasteners to

- Lumber (purlins and girts): Use Buildex Trugrip 10-16x1 1/2" fasteners or comparable
- Wood sheathing (OSB or Plywood): Use Buildex 14x1" Type A Carbon Tapper fasteners or comparable



EXPIRATION DATE AND USE OF THESE PLANS
THESE PLANS ARE THE PROPERTY OF HALBERG ENGINEERING, LLC. NO PART OF THESE PLANS MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF HALBERG ENGINEERING, LLC. THE USER OF THESE PLANS AGREES TO HOLD HALBERG ENGINEERING, LLC HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM THE USE OF THESE PLANS.

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P: (856) 694-3602 F: (856) 391-0916

EXPIRATION DATE: JAN 23, 2014
DESIGNED BY: Brian Van Lanen
CHECKED BY: Aaron Halberg, P.E.
STANDARD BUILDING DRAWINGS

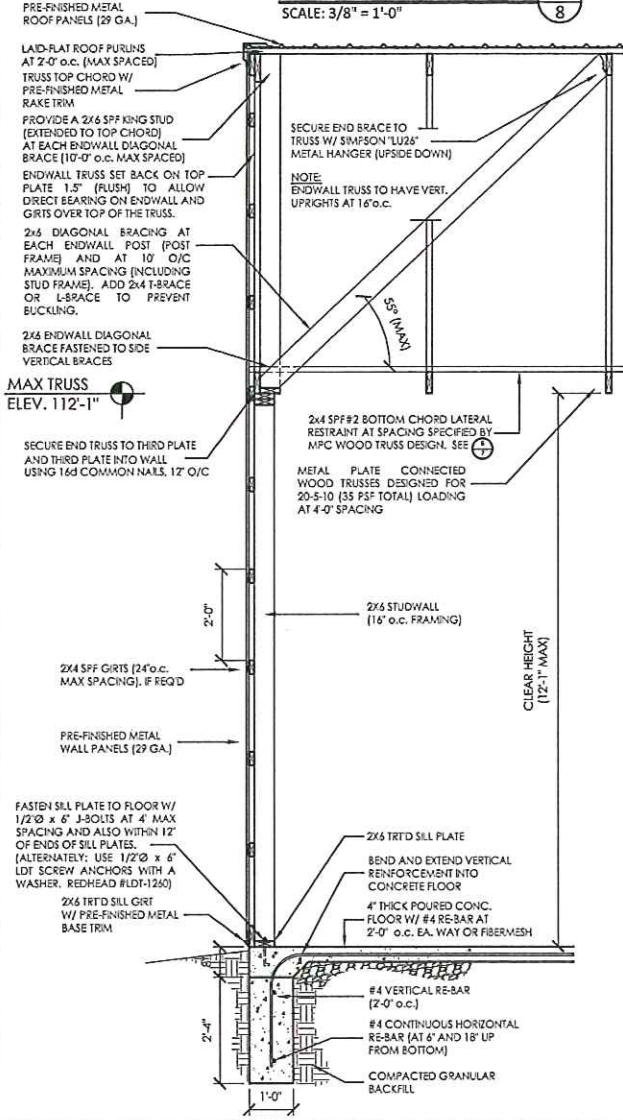
PAGE **7**

STUDWALL CONSTRUCTION - TRUSSES 4'-0"o.c. (PURLINS & GIRTS)

ENDWALL SECTION

SCALE: 3/8" = 1'-0"

2
8



SIDEWALL SECTION

SCALE: 3/8" = 1'-0"

1
8

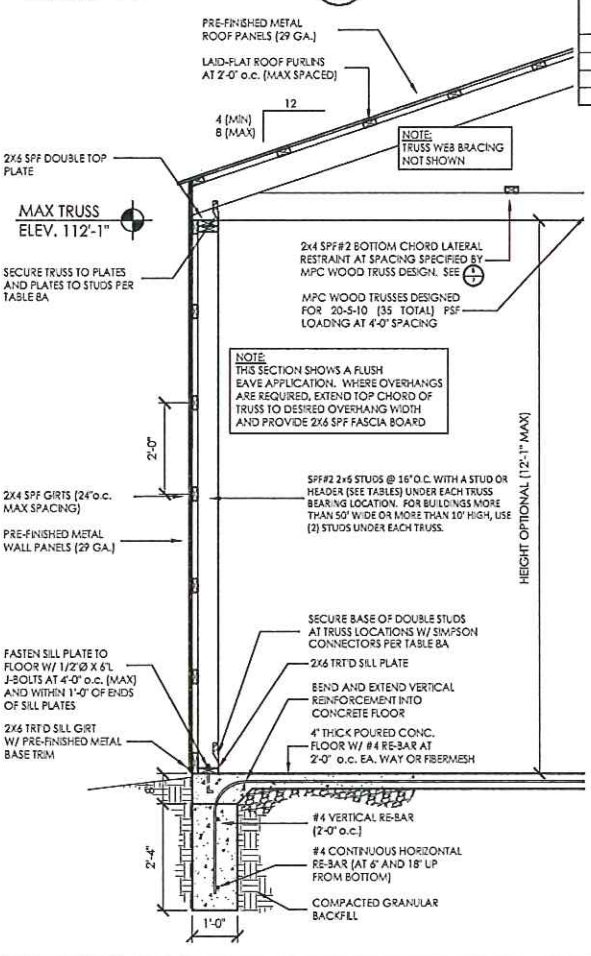
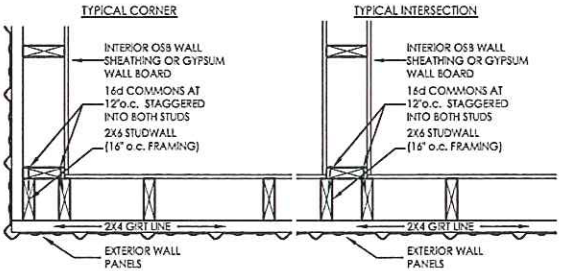


TABLE 8A

Load Path Connection Requirements Simpson Strong-Tie Part Numbers			
Building Width	Truss Connector	Plate to Stud Connector	Bottom Plate to Truss Support Studs
16' - 24'		H2A	SSP
26' - 40'		H2A	DSP
42' - 50'	H10	DSP	DSP
52' - 60'	H10	DSP	SP6

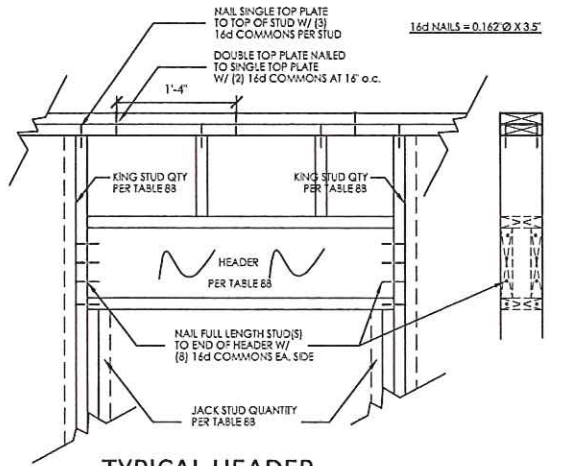
TABLE 8B

Exterior Wall Headers (Load Bearing Walls)									
Building Width	≤ 4' openings		> 4', ≤ 6' Openings		> 6', ≤ 8' Openings		> 8', ≤ 10' Openings		
	Header Material	Jack / King Studs	Header Material	Jack / King Studs	Header Material	Jack / King Studs	Header Material	Jack / King Studs	
16' - 24'	2Ply 2x8	1 / 1	2Ply 2x8	1 / 1	2Ply 2x10	1 / 2	3Ply 2x10	1 / 2	
26' - 40'	2Ply 2x8	1 / 1	2Ply 2x10	2 / 1	2Ply 2x12	2 / 1	3Ply 2x12	2 / 1	
42' - 50'	2Ply 2x10	2 / 1	2Ply 2x12	2 / 1	3Ply 2x10	2 / 1	2Ply 9-1/2	2 / 2	
52' - 60'	2Ply 2x10	2 / 1	3Ply 2x10	2 / 1	3Ply 2x12	2 / 1	2Ply 9-1/2	3 / 1	



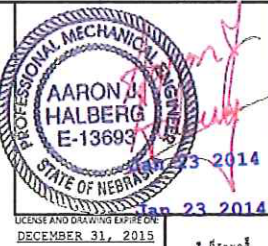
WALL CONSTRUCTION

SCALE: 1" = 1'-0"



TYPICAL HEADER

SCALE: 1" = 1'-0"



EXPIRATION DATE AND USE OF THESE PLANS
NECESSARY TO MAINTAIN THE QUALITY OF THE PROJECT. THE ENGINEER'S RESPONSIBILITY IS TO THE PUBLIC. THE ENGINEER'S RESPONSIBILITY IS TO THE PUBLIC. THE ENGINEER'S RESPONSIBILITY IS TO THE PUBLIC.

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DESIGNED BY:
D - JAN 23, 2014
CHECKED BY:
Brian Van Lingen
CONSTRUCTED BY:
Aaron Halberg, P.E.
STANDARD
BUILDING DRAWINGS

ENDWALL SECTION

SCALE: 3/8" = 1'-0"



SCALE: 3/8" = 1'-0"



Load Path Connection Requirements

TABLE 98

Exterior Wall Headers (Load Bearing Walls)

OSB SHEATHING TO BE NAILED TO CENTER STUDS W/ Ed NAILS AT 1'-0" o.c. (AS SHOWN)

EDGES OF SHEATHING TO BE NAILED W/ Ed S.S. NAILS AT 6" o.c. (AS SHOWN)

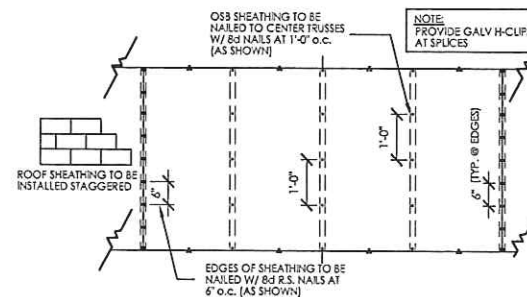
WALL SHEATHING TO BE INSTALLED STAGGERED

NAIL BOTTOM OF SHEATHING TO SILL PLATE W/ Ed S.S. NAILS AT 6" o.c. (AS SHOWN)

Dimensions shown: 6" (MP), 1'-0" (MP), 1'-6" (MP), 6" (MP).

WALL SHEATHING FASTENING

SCALE: $3/8" = 1'-0"$



ROOF SHEATHING FASTENING

SCALE: $3/8" = 1'-0"$

I. Justin Cash am asking for a variance regarding the Architectural Requirements for accessory buildings in the supplemental site developmental regulations which states exterior building materials and architectural designs used for all accessory buildings over 150 sq. ft. shall be consistent with the character of, or architecturally harmonious with the existing primary residential structure. And all accessory building over 150 sq. ft. shall comply with these requirements, unless other architectural requirements are approved as part of a conditional use permit, or unless the building is in the AG or RR district with a net lot area of 5 acres or more (excluding public road or right-of-way) which we are in the RR district with a deeded lot of 3.86 acres with 39.61 acres surrounding that is undeveloped and 10 acres lot next to us with a ranch home on it that belongs to my father-in-law Mike Olsenstead the executor of the property. My reasoning for asking for a variance is that we live on 53.47 acres of family owned property for approximately 75 years of which 3.86 is zoned to us. We are in the RR district approximately 400 ft. from Ridge Rd. with no neighbors to worry about outside of my father-in-law and no surrounding properties or developments to disturb.

We are able to build between 864 and 2522 sq. ft. of a building of which we only want to go between 864 and 988 sq. ft. staying well under the maximum size allowed according to code but want to do a metal accessory or "out" building versus matching the existing residential structure of lap siding and asphalt shingles. The hardship behind doing a metal building is the fact that we are exposed to extreme weather elements with high winds being on the outskirts of town and out in the open; having the metal building able to withstand it better and longevity of the building.

Staff Report

TO: Board of Adjustment
FROM: Troy Anderson, Director of Planning
DATE: January 25, 2016
SUBJECT: Variance Request – 302 S Woodland Ct.

Background: Kenneth Heatherly, owner of approximately 1.3 acres located at 302 S Woodland Ct., is requesting approval of a variance authorizing addition of a kitchen sink to a cabana house currently under construction subsequently authorizing two (2) one-family dwellings to be located on one (1) lot in an RL Residential Lake zoning district.

The subject property is located at 302 S Woodland Ct., and is currently zoned RL Residential Lake. Properties to the North, East, South and West, opposite Woodland Ct., are either one-family dwellings or unimproved lake front property, identified as residential on the Dodge County tax rolls, and are similarly zoned RL Residential Lake.

The appellant contacted our offices late last summer and described development plans for construction of a detached ... After informing the appellant that what he was describing met the definition of *dwelling unit* (as that term is defined in the International Residential Code (IRC)) and that Fremont zoning codes did not allow more than one (1) one-family dwelling (i.e. single-family residence) to be constructed on a single lot or tract (see explanation of *single-family residential*) in an RL Residential Lake zoning district. Subsequently the appellant provided a statement (ref. e-mail from Ken Heatherly to Troy Anderson dated July 6, 2015) that after discussing the details with his wife, “We have decided on an approach. We plan to remove the sink. Per section R306, the structure then does not qualify as a dwelling unit. An updated floor plan is attached.” Shortly thereafter the appellant submitted a complete building permit application for the construction of a cabana, void of a kitchen sink, and after reviewing the plans Staff issued a building permit in September of 2015.

Staff recommends disapproval because the Board of Adjustment lacks the authority to grant a variance to the use of land.

Nebraska Revised Statutes relating to the Board of Adjustment and Variances

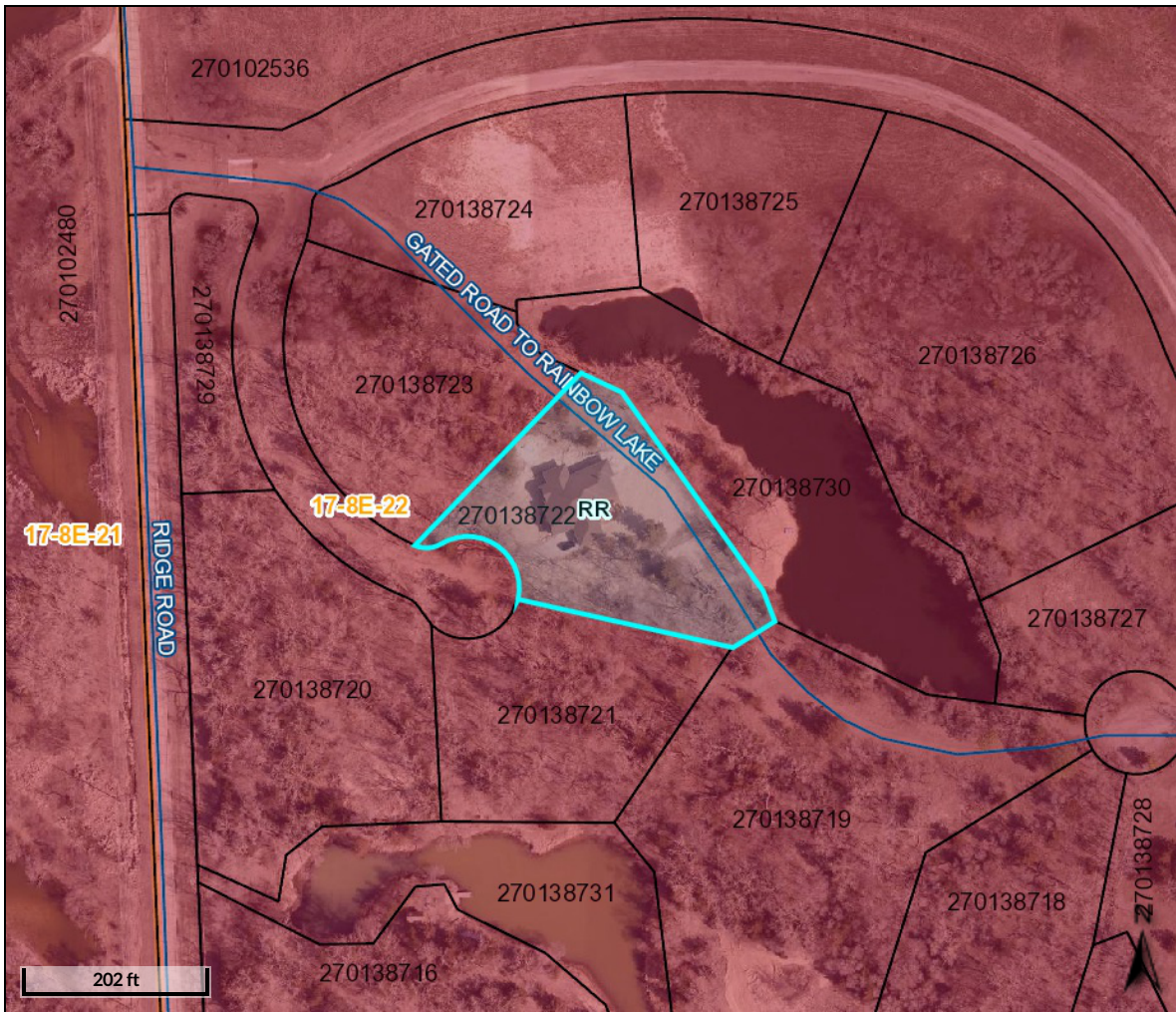
Nebraska Revised Statutes (NRS) section 19-907 requires the local legislative body [enforcing zoning regulations] to provide for the appointment of a board of adjustment (Board) – any

action of which shall not exceed the powers granted to it by the State. NRS section 19-910, and similarly FZO § 129.c., details the powers of the Board as follows:

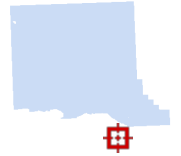
(1) The board of adjustment **shall**, subject to such appropriate conditions and safeguards as may be established by the legislative body, **have only the following powers**: (a) To hear and decide appeals when it is alleged there is **error in any order, requirement, decision, or determination made by an administrative official or agency based on or made in the enforcement of any zoning regulation** or any regulation relating to the location or soundness of structures, except that the authority to hear and decide appeals shall not apply to decisions made under subsection (3) of section 19-929; (b) to hear and decide, in accordance with the provisions of any zoning regulation, requests for **interpretation of any map**; and (c) when by reason of **exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions** or other extraordinary and exceptional situation or condition of such piece of property, **the strict application** of any enacted regulation under this section and sections 19-901, 19-903 to 19-904.01, and 19-908 **would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon** the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution. **[emphasis added]**

It must be emphasized that variances are not for the “use of land.” Use variances are not permitted and are illegal in the State of Nebraska. If a property owner wants to obtain a change of use, a rezoning should be requested. Variances are only granted for purposes of giving property owners relief from the area requirements of the zoning ordinance, such as setbacks, including side yards, front yards and rear yards or other dimensional requirements. (Nebraska Planning Handbook 1st ed., 2002, p. 5-7)

Fiscal Impact: N/A



Overview



Legend

Highways

<all other values>

I

LS

N

R

US

Parcels

Sections

Airport

Streets

Zoning

<all other values>

AG

CC

CC/PD

DC

GC

GI

LI

MU

MU / TND

R-1

R-2

R-2/NC

R-3

R-4

R-5

RR

UC

UC/SC

UNKNOWN

Parcel ID	270138722	Alternate ID	2393-00-0-20255-000-0000	Owner Address	HEATHERLY, KENNETH F & STACY M
Sec/Twp/Rng	22-17-8	Class	Res - Residential		302 S WOODLAND CT
Property Address	302 S WOODLAND CT	Acreage	n/a		FREMONT, NE 68025-6055
District	236 - PLATTE 1-8-P				
Brief Tax Description	WOODLAND LAKES SUB LOT 7				
	(Note: Not to be used on legal documents)				

APPEAL/EXCEPTION/VARIANCE APPLICATION

APPLICATION TYPE

- ☐ Administrative Appeal
☐ Special Exception (including interpretation of any map)
☒ Variance

APPLICANT (all correspondence will be directed to the applicant)

Name Kenneth F. Heatherly Phone 402-490-2686
Address 302 S. Woodland Ct. Fax _____
City Fremont State NE Zip 68025
Email ken.heatherly@esgi.com

PROPERTY OWNER (if not the same as applicant above)

Name Same Phone _____
Address _____ Fax _____
City _____ State _____ Zip _____
Email _____

ENGINEER, SURVEYOR, OR ARCHITECT (if not the same as applicant above)

Name Same Phone _____
Address _____ Fax _____
City _____ State _____ Zip _____
Email _____

AGENT (if not the same as applicant above)

Name Same Phone _____
Address _____ Fax _____
City _____ State _____ Zip _____
Email _____

(application continued on next page)

APPEAL/EXCEPTION/VARIANCE APPLICATION

PROPERTY INFORMATION

Address of Property 302 S. Woodland Ct, Fremont NE 68025
General Location (if no address is available) _____

Brief Legal Description of Property Woodland Lakes Sub lot 7

Description of Request (the following does not satisfy the "statement" requirement as described herein; a separate "statement" is required to be considered complete)

Request for variance to zoning district regulation
to add a kitchen sink to the second structure
on our property.

An application may be filed only by the owner(s) of the property, or duly authorized officer or agent of the owner(s). By executing this application, he/she does hereby acknowledge the above statements to be true and accurate to the best of their knowledge, and understand that knowing and willful falsification of information will result in rejection of the application and may be subject to criminal prosecution.

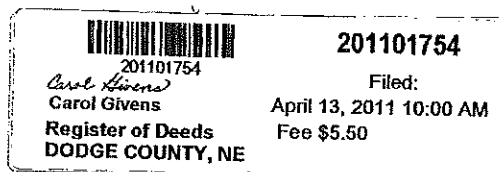
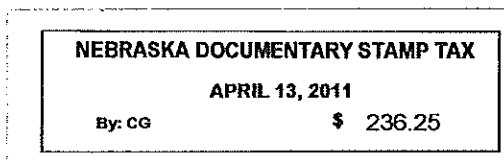
I have received, read and understand the terms and conditions of this request, and agree to compliance with all applicable codes and ordinances of the City.

Kenneth F. Heatherly Kenneth F. Heatherly 1-2-16
Signature Print Name Date

Office Use Only

Submittal Date 1-5-2016 Project No. _____
Payment Amount 60.00 Receipt No. Credit Card
Other Comments _____

OCTE
110388



SURVIVORSHIP WARRANTY DEED

KNOW THAT ALL MEN BY THESE PRESENTS THAT

Woodland Lakes, LLC, a Nebraska limited liability company, herein called the Grantor whether one or more, in consideration of One Dollar and other valuable consideration received from Grantees, does grant, bargain, sell, convey, and confirm unto

Kenneth F. Heatherly and Stacy M. Heatherly, husband and wife, as joint tenants with right of survivorship, and not as tenants in common, the following described real property in Dodge County, Nebraska:

Lot 7, Woodland Lakes Subdivision, a planned private rural subdivision, Dodge County, Nebraska.

To have and hold above described premises together with all tenements, hereditaments and appurtenances thereto belonging unto the grantees and to their assigns, or to the heirs and assigns of the survivor of them forever.

And the grantor does hereby covenant with the grantees and with their assigns and with the heirs and assigns of the survivor of them that grantor is lawfully seized of said premises; that they are free from any encumbrance except covenants, easements and restrictions of record; all regular taxes and special assessments; except those levied or assessed subsequent to date hereof; that grantor has good right and lawful authority to convey the same; and that grantor warrants and will defend the title to said premises against the lawful claims of all persons whomsoever.

It is the intention of all parties hereto that in the event of the death of either of the grantees, the entire fee simple title to the real estate shall vest in the surviving grantee.

Executed: 1 April, 2011

Woodland Lakes, LLC, a Nebraska
limited liability company

By: David L. Christensen, President

STATE OF NEBRASKA
COUNTY OF Dodge

The foregoing instrument was acknowledged before me this 1 day of April, 2011 by
David L. Christensen, President of Woodland Lakes, LLC, a Nebraska limited liability company.

Notary Public



LETTER OF INTENT
RE: APPLICATION FOR VARIANCE BY KEN AND STACY HEATHERLY

City of Fremont
Planning and Development
400 E. Military Ave.
Fremont, NE 68025

This letter is written to provide an explicit statement as to the nature and intent of the variance that is being requested by Ken and Stacy Heatherly on their property at 302 S Woodland Ct., Fremont, NE 68025. The size of the property involved is 1.26 acres more or less. The property is outside of the Fremont city limits and is located in the Woodland Lakes subdivision in Dodge County, Nebraska. Woodland Lakes is a twelve lot rural lake development, with lots ranging in size from 1 to 3 acres more or less, and is overseen by the Woodland Lakes Home Owners Association and associated Restrictive Covenants (copy enclosed). The property is assigned a Zoning District of Lake and River Residential (RL) by The City of Fremont, whose governance reach extends to this part of Dodge County.

PURPOSE OF THE REQUEST:

It has always been our intent to build a second structure on our property. The size, rural location, and lake setting of our property affords the opportunity for more than one structure. Further, HOA covenants authorize up to three structures of compliant size on each lot.

As the oldest sibling to a mother of 6 children, it has always been Stacy's intent to be the caregiver for her mother, Sally Fisher, as she aged. Our setting outside of Fremont is perfect for this plan, as we have the space to create an idyllic environment that can provide separation and independence, yet also close proximity to insure the needs of an aging parent are met.

In 2015 as we began working with the city to obtain building permits for the second structure creation, we were informed, based on our Zoning District, that any new structure could not have all the amenities of a dwelling unit as defined in section 207.5 of the Fremont Unified Development Ordinance (UDO).

Section 207.5. Dwelling Unit: One or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family

As explained to me, we would have to remove one of the critical amenities from the above definition – separate living quarters, toilet, shower, or kitchen sink – in order for this structure to be acceptable and approved for building permits. It was also highlighted that a variance

LETTER OF INTENT
RE: APPLICATION FOR VARIANCE BY KEN AND STACY HEATHERLY

process existed where a governing body could review submitted exceptions to existing zoning policies. Given our desire to start on the construction process right away, I submitted an updated floor plan that removed the kitchen sink. This plan was approved and permits were issued.

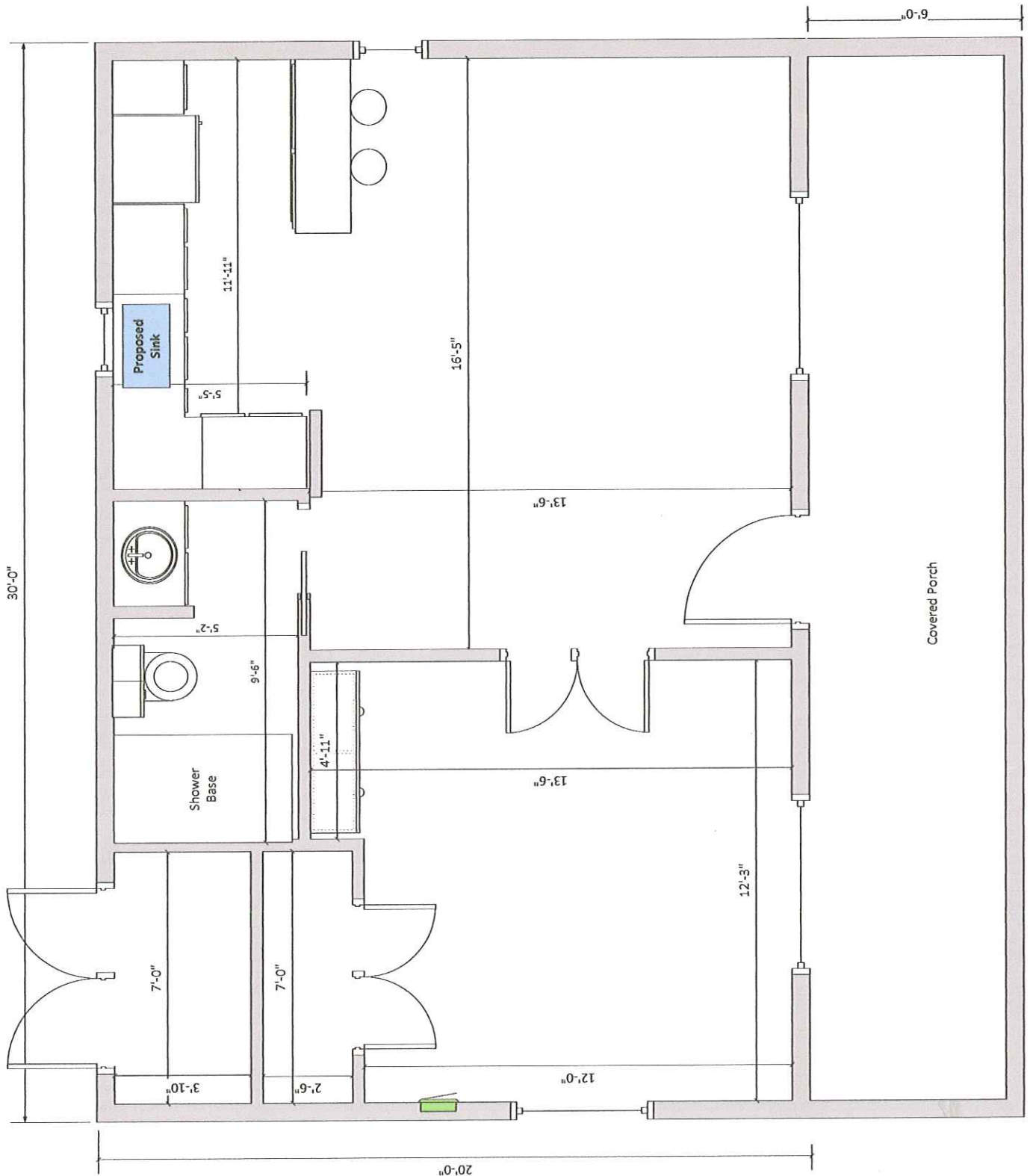
The structure we are building is not large; it is a total of 600 square feet. A floor plan is attached. At this time, we have made significant progress on our build. All outside work has been completed and we are beginning on the inside of the building.

Therefore, the purpose of this request is to ask for a variance to the Unified Development Ordinance governing Zoning District RL (Lake and River Residential), thereby allowing us to add a kitchen sink into our second structure build on our property at 302 S Woodland Court, Fremont NE 68025.

Respectfully Submitted,

Kenneth F. Heatherly
Homeowner
302 S Woodland Ct
Fremont, NE

Heatherly Second Structure – Floor Plan with Proposed Sink Location



FILED
BOOK 2010 PAGE 2629

2010 JUN -3 AM 10:15

Carol Stevens
DODGE COUNTY
REGISTER OF DEEDS
COMPARE INDEX FEE \$ 88-
my

Amended and Restated Restrictive Covenants For

Woodland Lakes, A Subdivision in Dodge County, Nebraska

This Amendment and Restatement is made on the date hereinafter set forth by Woodland Lakes, LLC, A Nebraska limited liability company, as "Declarant" of the Restrictive covenants for Woodland Lakes, a Subdivision in Dodge County, Nebraska, which apply to the following described real property:

Woodland Lakes Subdivision, a planned private rural subdivision located in part of the West Half of Section 22, Township 17 North, Range 8 East of the 6th P.M., Dodge County, Nebraska, the final plat having been filed on April 11, 2007, at Instrument #553 of the Dodge County Register of Deeds, Dodge County, Nebraska, including Lots 1 through 12, Outlots 1 through 4 and all private roads;

WHEREAS, Restrictive Covenants for Woodland Lakes, a Subdivision in Dodge County, Nebraska, have been executed and filed in the records of the Dodge County Register of Deeds at Book 2007, Page 2458, on April 20, 2007.

WHEREAS, Amendment to the Restrictive Covenants for Woodland Lakes, a Subdivision in Dodge County, Nebraska, have been executed and filed in the records of the Dodge County Register of Deeds at Book 2000, Page 1613, on April 9, 2000.

ARTICLE I
DEFINITIONS

The following Definitions shall apply:

A. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot above described, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

B. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of Woodland Lakes Subdivision as Lots 1 through 12.

C. "Declarant" shall mean and refer to Woodland Lakes, LLC and its assignees by specific written assignment, executed and acknowledged by Woodland Lakes, LLC, assigning its rights under and pursuant to these Restrictive Covenants.

D. "Association" shall mean and refer to Woodland Lakes Homeowner's Association, its successors and assigns as a Non-Profit corporation.

ARTICLE II
ARCHITECTURAL CONTROL

A. Building Codes: All buildings and improvements within the Property shall be constructed in conformity with the applicable zoning and building codes and design standards of the City of Fremont, Nebraska, and in conformity with these covenants, conditions and restrictions.

B. Architectural Control Committee: No construction of improvements shall commence on any Lot before an Architectural Permit is issued by the Architectural Control Committee. The Architectural Control Committee shall review such plans in relation to the type and exterior Improvements constructed, or approved for construction and landscaping on neighboring Lots and in surrounding area, and any general scheme or plans formulated by Declarant or Architectural Control Committee with regard to views, retaining natural environment area, and character of the subdivision. In this regard, Declarant intends that the Lots shall form a quality residential community with Improvements constructed of high quality materials including, but not limited to, homes and landscaping, with view and preservation of natural environment areas to the extent possible. The decision to approve or refuse approval of a proposed Improvement including, but not limited to, homes and landscaping, shall be exercised by the Architectural Control Committee to promote development of the Lots and to protect values, character and residential quality of all Lots. If the Architectural Control Committee determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, the Architectural Control Committee may, in its discretion, refuse approval of the proposed Improvement. Three (3) members of the Architectural Control Committee present at a meeting

shall constitute a quorum. The Architectural Control Committee shall act by majority vote of those voting on the particular Improvement.

C. Architectural Permit: To obtain an Architectural Permit for an improvement to a Lot the Architectural Control Committee will require:

(1) Plans and Fee: Before commencing construction, two sets of construction plans, specifications, and site plans with grade elevations showing drainage and landscaping must be delivered to the Architectural Control Committee with a \$50.00 review fee. The Plans and specifications will be reviewed within thirty (30) days. At least thirty (30) days prior to commencing any landscaping, site plans showing landscaping, including the location of improvements, size, elevation and composition of the features, including trees, flowerbeds, vegetable gardens, rimming and replacement of existing features and ground cover, shall be submitted to the Architectural Control Committee. Said landscaping plan will be reviewed within thirty (30) days. A \$500.00 fine will be imposed by the Association when this procedure is not followed. The approval or disapproval of the Architectural Control Committee, as required in these covenants, shall be in writing. The fees set forth above will be subject to change by a majority vote of the Board of Directors of the Association.

(2) The site plan shall be prepared by a licensed architect or surveyor indicating specific improvements including site drainage and indicating lot number, street address, and sidewalks. Site layout before excavation is to be performed by a licensed surveyor.

(3) Building: Construction plans shall include floor plan, elevations and specifications, location and specifications for driveway and parking facilities.

(4) Docks, decks, gazebos, pet enclosures, fences, retaining walls, drive and parking extensions shall be shown on the site plan or landscaping plan showing the: location of the improvements, size specification and/or pictorial representation.

(5) A road maintenance impact fee set by the Architectural Control Committee, but in no event less than \$1,000.00, shall be paid to the Association before the commencement of the original construction of a home on any Lot. In the event damage is done to the roads of the subdivision requiring maintenance, the cost of which exceeds \$1,000.00, the Board of Directors of the Association may levy additional road maintenance impact fees over and above the amount initially set by the Architectural Control Committee. In such event, the additional assessment of the fee shall bear a reasonable relationship to the actual maintenance cost incurred by the Association. Such additional road maintenance impact fees shall be levied against the Lot on which the construction occurred and shall be due and payable within thirty (30) days after notice of the assessment of the fee has been mailed to the Lot Owner by regular mail. In the event said road maintenance impact fee is not paid in full within thirty (30) days, the Association shall be entitled to collect the fee through the procedures set forth in Article V, paragraphs O through V, of these Restrictive Covenants. A road maintenance impact fee may be assessed by the Architectural Control Committee on improvements made after original construction as

referenced in paragraph II H. hereof. There is no minimum fee required for such improvements. In the event damage is done to the roads of the subdivision as a result of improvements made after original construction which exceed the amount assessed by the Architectural Control Committee, the Board of Directors may subsequently assess an additional road maintenance impact fee against the Lot being improved. In such event, the additional assessment of the fee shall bear a reasonable relationship to the actual maintenance cost incurred by the Association. The collection procedure for road maintenance impact fees levied by the Board of Directors as a result of improvements made after original construction shall be accomplished in the same manner as set forth above for the collection of road maintenance impact fees on original construction.

D. Building Materials and Building Requirements: It is the intent of the developers of this subdivision that all construction and construction material be in keeping with the existing environment and character of the area and subdivision and the following, or their equivalence in the opinion of the Architectural Control Committee shall apply:

- (1) Complete submission of type, quality, color and use of materials proposed for the exterior of such improvements.
- (2) Hand split or sawn cedar shakes and shingles equal to or above a 50 year Architectural laminated shingle. Metal roofs are not permitted.
- (3) The minimum pitch of the major roof areas will be 8/12.
- (4) No residence will exceed two stories in height.
- (5) The minimum size of permanently enclosed living space will be no less than 1,790 square feet in the main floor area, 1,492 for 1-1/2 story and 1,027 for 2-story.
- (6) Front, rear and side yard setback lines are indicated on the approved plat of the subdivision.
- (7) All residences must have connected and enclosed garages adequate for at least two automobiles.
- (8) Any approved out-building must use the same exterior materials and construction style as the residence.
- (9) Siding can be of wood (no woodfiber composites), cement composite siding and soffit material, natural stone or brick masonry. Approval of panel or sheet vertical sidings of the same materials will be limited to feature areas only. Chimneys must be finished in natural stone or brick masonry. Foundations must be covered and not left in a natural concrete state.
- (10) Exterior stains and paints must be of wood or earth tone colors.

- (11) Exterior lighting, as approved in the permit process, shall be indirect or controlled focus and intensity as to not be disturbing to residents of adjacent Lots.
- (12) Electrical, Cable TV and Telephone Service: Underground electrical service will be installed to each Lot and all extensions of the service within all Lots must be served with underground extensions. All cable TV service lines are also to be put underground.
- (13) The developers will provide and the Association will maintain a suitable and aesthetically appropriate fencing for the perimeter of the subdivision. Fencing on interior property lines, if desired by Lot Owners, will be approved only if constructed with the same fencing as used in subdivision perimeter fencing. Fencing within the Lots for pools, patios, pet enclosures, etc., will be approved only if constructed of wood or other approved materials, do not exceed 72" in height, and are within the setback areas indicated on the approved plat of the subdivision.
- (14) The Architectural Control Committee will only consider approval of one detached utility building, and one detached utility shed per Lot. The utility building is limited to a maximum of 864 square feet of floor area and 15 feet in height at the ridgeline. The utility shed is limited to a maximum of 150 square feet of floor area. The outbuildings will be permanently attached to a concrete floor with footings as required by local building codes. All out-buildings are to be sited with the setback areas indicated on the approved plat of the subdivision, and as required by local building codes.
- (15) Garbage and refuse containers, if left outside, must be concealed so as to not be visible from streets or adjoining Lots.
- (16) Antennas and Satellite Dishes: No antennas for any purpose are to be erected outside a residence and satellite or Direct TV dishes are limited to 24" in diameter and placed in a concealed location and attached to residence.
- (17) Kennels, dog houses and dog runs shall only be allowed at the rear of the residence, attached to or immediately adjacent to the residence and hidden from view by fencing or landscaping.
- (18) Driveways must be constructed with permanent surfaces of concrete, brick, asphalt or, in the alternative, rock or crushed material surfaces acceptable to the Architectural Control Committee.
- (19) If an exterior fuel tank is required for residential heating purposes it must be underground.
- (20) Cased wells are to be placed only within an area designated for each Lot. Cased wells are to be installed only by certified well installers.
- (21) Septic tanks are to be placed only within an area designated for each Lot.

E. Construction Period: Construction once started must be totally completed within eighteen months. Any construction started and not completed will be regarded as abandoned and the association will initiate proceedings to return the Lot to its original condition.

F. Occupation: All residences must be occupied within six months of completion. No temporary structures may be placed and occupied on the Lot prior to or after completion of the residence and an incomplete residence without a Permit of Occupancy from the City cannot be occupied.

G. Erosion Control During Construction: The Architectural Control Committee will determine if silt fences need to be installed by the Lot Owner prior to the start of construction and, if required, shall be at the sole cost and expense of the Lot Owner. If an Owner fails to install any sufficient silt fences to comply with this paragraph, Declarant or the Association may install such silt fencing as is necessary to comply with this paragraph, and shall be entitled to be reimbursed, with interest at the rate charged on delinquent assessments, and shall be entitled to record a lien against the Lot in which the silt fencing is installed, and foreclose the same if the Owner fails to pay within thirty (30) days after written demand for all costs and expenses related thereto. Lot Owner hereby indemnifies and holds Declarant or the Association harmless from any action taken by the Declarant pursuant to the provisions of this paragraph.

H. Improvements Made After Original Construction: Improvements made after original construction involving any of the types of improvements covered by this Article II shall be subject to review by the Architectural Control Committee. The Architectural Control Committee may exempt certain improvements and, for the purpose of doing so, may establish an amount of money under which improvements will be allowed without an architectural permit. In such event, the Architectural Control Committee shall serve written notice on all Lot Owners of the minimum dollar amount for improvements which will require an architectural permit. All architectural permits over the minimum dollar amount of the type covered by this Article II shall require an architectural permit.

I. Architectural Control Committee: The Architectural Control Committee consists of six (6) persons. Until such time as homes are built on all twelve (12) Lots in Woodland Lakes Subdivision, the Committee shall consist of representatives of the Declarant, David L. Christensen, Cynthia A. Christensen, Thomas A.F. Christensen, Diane E. Christensen Hillis, Jeffrey A.M. Christensen and John L.R. Christensen. In the event any one or more of them is unable or unwilling to serve, the Declarant shall appoint a replacement representative to serve on the Committee. Upon the completion of construction of residences on all twelve (12) Lots, the Board of Directors of the Homeowners' Association shall serve as the Architectural Control Committee.

ARTICLE III

REGULATED USE OF LOTS AND COMMON AREAS BY OWNERS

A. Use of Lots: All Lots are to be used exclusively for residential single family homes. The restrictive covenants are in place to protect the value, character and residential quality of the entire subdivision. This is a Planned Development (PD) and as such is patterned

home plans for ranch, 1 ½ story and two story homes are furnished that are indicative of the type and style of architecture of homes that will be approved for this subdivision.

B. Use of Lots Before Home Construction: Unless receiving written permission from the Board of Directors, Lot Owners are prohibited from using their Lot for camping overnight, parking RV vehicles or motor homes, or placing or erecting any temporary shelter on their Lot prior to the construction of a residence. Cutting or removal of trees may only be done pursuant to Article III, subparagraph D, and cutting or removal of live vegetation or any alteration of the Lot area is prohibited until approvals have been obtained from the Architectural Review Committee. Lot Owners will maintain their Lots free from noxious weeds and plants, control annual weed and grass growth, and remove storm damaged and fallen trees as soon as possible.

C. Motorized Vehicles and Trailers:

- (1) Commercial trucks and vehicles are allowed only for deliveries and service and are not allowed to be parked or stored outside within the subdivision even if owned by Lot Owners.
- (2) Campers, house trailers, RV's, trailers and related vehicles are not to be stored or parked or stored outside on Lots or streets of the subdivision for more than two days.
- (3) Personal vehicles of Lot Owners are to be kept inside except automobiles in daily use.
- (4) Parking on streets of the subdivision is limited to short term occasional parking and never overnight.
- (5) Trailers and accessory vehicles are to be kept inside except when in use.
- (6) ATV's, snowmobiles and other similar vehicles are permitted for use by Lot Owners and residents in transportation on subdivision roads and in maintenance of their Lot areas. These vehicles are to be parked outside only when in use. There will be no provision for recreational use of these vehicles in any part of the subdivision and recreational use is prohibited.
- (7) Repair of vehicles and other equipment should be confined to inside areas or if absolutely necessary any repair of vehicles and other equipment outside will be limited to 48 hours.

D. Tree Removal: No tree upon the Lot of an Owner may be moved, removed, cut or destroyed unless complete plans showing the exact tree or trees to be moved, removed, cut or destroyed, and the reason therefore, shall have been submitted to and approved in writing by the Architectural Review Committee.

E. Burning: Open burning other than small, occasional and contained campfires is strictly prohibited. Open burning, with appropriate permit, is permitted when improving Lots and disposing of dry woody material only. Incinerators or trash burners are not permitted.

F. Use of Common Areas: Owners of each Lot shall be entitled to use of the lakes and common areas as shown on the filed plat and subject to rules, regulations, and restrictions as established by the Association.

G. Pets and other animals:

(1) Domesticated non-commercial house pets must be kept on a leash or under complete control of the owners and residents of Woodland Lakes. Animals or pets of any kind will not be kept for breeding or maintained for any commercial purpose.

(2) In consideration of the welfare and enjoyment of the residents of this subdivision pets with aggressive and/or annoying behavior such as excessive barking, howling and whining will not be tolerated and will be subject to removal from the subdivision pursuant to order of the Board of Directors.

(3) No animals including livestock or poultry of any kind are permitted to be kept, raised or bred on any area within the subdivision, except that horses will be kept exclusively on Outlot Number 1.

H. Prohibited Activities: No noxious or offensive activities shall be carried on any Lot or within the Commons, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Lot Owners including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation.

I. No Commercial Activity: Any commercial activity that would create traffic, invite customers, patrons or solicitors to the subdivision is prohibited.

J. Landscaping: All landscape, natural and ornamental, including grasses, trees and shrubs shall be neatly maintain at all times. Noxious and undesirable plant growth shall be controlled and debris from landscaping maintenance is to be disposed of and not allowed to accumulate.

K. Signs and Objects: No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting or not more than six (6) square feet advertising a lot or residence "For Sale". During the election season, political campaign signs not more than six (6) square feet may also be posted on the Lot. Nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner or Owners of any Lot or any resident of Woodland Lakes Subdivision.

L. Clotheslines: Outside clotheslines are not permitted at any time.

M. Waste Removal: Each Lot Owner will be required to contract for commercial service in removal of garbage and trash. Garbage and trash containers will be permitted outside or unconcealed on collection days only.

N. Hunting and Firearms: All hunting is prohibited. Use of firearms within Woodland Lakes Subdivision is prohibited. There shall, however, be an exception from these prohibitions of the use of firearms for the elimination of nuisance wild animals made at the direction of the Declarant or Association and with the written permission from local Nebraska Game & Parks personnel.

O. Insurance: Nothing shall be done or kept on a Lot or on the common area that would increase the rate of insurance relating to a Lot or the common area without the prior written consent of the Association. Owners and residents shall not permit anything to be done or kept on a Lot or the common area that would result in the cancellation of insurance on any residence or on any part of the common area, or that would be in violation of any law.

ARTICLE IV **LAKE RULES AND REGULATIONS**

A. Rules and regulations: The Declarant has established the Lake Rules and Regulations for the use of the Lake by the Owners and their guests. At the time Owner purchases a Lot, the Owner shall receive the Lake Rules and Regulations for the use of the Lake, and will acknowledge receipt of such Lake Rules and Regulations by executing the appropriate receipt. All Owners and their guests are hereby notified that they are bound by the Lake Rules and Regulations for the use of the Woodland Lakes established by the Declarant and/or Association, as such rules are now stated and amended from time to time, and the provisions of these Covenants.

B. Restrictions and Covenants Pertaining to the Use of the Lakes: In addition to the Restrictions and Covenants set forth, the Declarant hereby establishes the following restrictions and covenants pertaining to the use of the Woodland Lakes:

(1) All watercraft operating on the Lakes must comply with all the Lake Rules and Regulations as well as Regulations established by the State of Nebraska for watercraft.

(2) All watercraft on the Lakes must be owned by Lot Owners and registered with the Association. No other watercraft shall be permitted on any of the Lakes.

(3) Only no-wake boating will be allowed on Woodland Lakes. Permission for the use of small watercraft using gas powered motors of very limited horsepower may be permitted upon review and approval by the Board of Directors.

(4) Prior to the installation of permanent or floating docks or decks extending into the lakes, Lot Owners must receive written permission from the Architectural Control Committee and the Board of Directors as to size, appearance and location.

C. Rules and Regulations: In addition to the above restrictions and covenants, the use of the Lakes shall be subject to the Lake rules and Regulations, as amended from time to time.

D. Additional Regulations: The Board of Directors may adopt such additional Regulations as it deems necessary and appropriate, but in doing so shall not have the authority to change the Rules and Regulations set forth herein without an amendment of these Covenants.

ARTICLE V

HOMEOWNERS ASSOCIATION

A. Membership: Every Lot Owner and, in addition, the Owner of Outlot 1, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot or Outlot.

B. Voting Rights: All Lot Owners and the Owner of Outlot 1 shall be entitled to one (1) vote per Lot owned by each Lot Owner. When more than one (1) person holds an interest in a given Lot, such persons shall, between themselves, determine how their vote shall be exercised. There shall be no fractional votes. In the event Lots are combined, the Lot Owner shall have and retain the multiple votes which existed before the Lot combination. In the event the Lots are subdivided, each subdivided Lot shall carry with it one (1) vote. However, so long as the ownership of the subdivided Lots remain with the subdividing Lot Owner, said Lot Owner shall be entitled to only one (1) vote. As each subdivided Lot is sold to a third party, voting rights for the subdivided Lot will accrue to the third party.

C. Description of the Commons: The Commons shall include the private roads, gates, entrances, walking trails, lakes (Outlots 3 and 4), docks, piers, including Outlot 2 and any easements or right-of-ways as designated on the plat of Woodland Lakes Subdivision, but excluding Outlot 1.

D. Initial Improvements to Commons: The Declarant shall install at its expense all initial privately-owned improvements to the Commons during a period of two (2) years from this date.

E. Conveyance of Commons: Declarant shall convey the Commons and Outlots 2, 3 and 4 (which for all purposes shall be treated as part of the Commons) to the Association at the time when eight (8) of the twelve (12) Lots are owned by Lot Owners other than the Declarant. Outlot 1 is not part of the Commons and will be retained, controlled and maintained by Declarant. Cynthia A. Christensen and/or David L. Christensen and the Declarant, by these Covenants and also by reservation in a deed from Cynthia A. Christensen and David L. Christensen to the Declarant and from the Declarant to the Association, shall retain easement rights over and across Woodland Trail and Woodland Cove as more particularly described in reservation of easements from the Christensens to the Declarant and the Declarant to the Association. Said easement rights shall benefit the Christensens, the Declarant and its Members-Owners, their heirs, successors and assigns, the invitees and licensees thereof and shall run in perpetuity. Said easement shall benefit the Owners, present and future, of Outlot 1 and the Owners, present and future, of land presently owned by David L. Christensen and/or Cynthia A. Christensen lying in the Southwest Quarter of the Northwest Quarter of Section 22, Township 17 North, Range 6 East of the 6th P.M., Dodge County, Nebraska, and generally north of Woodland Lakes Subdivision to be more particularly described in reservation of easements contained in

deeds from the Christensens to the Declarant and the Declarant to the Association. In the event of the development of the land north of Woodland Lakes Subdivision, the Christensens, Declarant, or any other party developing said land shall make reasonable provisions for said new development, and Lot Owners therein, to participate in the maintenance and capital improvements of Woodland Trail, together with any entrances and gates. These reserved easements shall include the right of those benefited by the easement to pass freely through the gates to Woodland Lakes Subdivision and the Association as well as the Owners of Woodland Lakes Subdivision shall not take any action to hinder said free passage. Prior to the conveyance of the Commons to the Association, the Declarant shall exercise all rights, powers, and obligations of the Association or the Board of Directors.

F. Control of Commons by Association: The Commons shall be subject to the control and management of the Association through its Board of Directors. The Association shall have the right from time-to-time to establish, revoke, modify, and enforce reasonable rules and regulations with respect to all or any part of the Commons.

G. Maintenance of Commons: Each member of the Association, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the Commons, which covenants by the members shall be satisfied by the payment of assessments for the administration, maintenance and/or improvements of the Commons and for other purposes of common interest and benefit to members of the Association. The covenant to maintain the Commons shall include insuring the Commons against public liability and property damage. Such insurance shall be in commercially reasonable amounts. Administration of the Commons shall include the payment of any taxes levied upon the Commons by any governmental entity.

H. Lot Owners' Easements and Delegation of Use: Every Lot Owner and the Owner of Outlot 1 shall have the right and easement of enjoyment in and to the Commons, which should be appurtenant to and shall pass with every Lot subject to the following provisions:

- (1) The right of the Association, its successors or assigns, to promulgate reasonable rules and charge reasonable admission or other fees for the use of the Commons or any part thereof.
- (2) The right of the Association to suspend the voting rights and rights to use the Commons for unpaid assessments or infractions of the Association's rules according to subparagraph U hereof.
- (3) The right of the Association to dedicate or transfer all or any part of the Commons to any public agency, authority or utility for the purpose of providing utilities and/or services to the Subdivision. No such dedication or transfer shall be effective unless approved by an affirmative vote of owners of the seven (7) of the twelve (12) Lots of Woodland Lakes Subdivision.

Any Lot Owner and the Owner of Outlot 1 may delegate, in accordance with the Rules and Regulations of the Association, his/her right of enjoyment to the Common Facilities to members of his/her family.

I. Costs of Administration, Maintenance or Improvement of Commons: All costs of administration, maintenance, and/or improvement of the Commons shall mean the total cost and expense incurred by the Association in operating, maintaining, repairing, and replacing any facility, utility, and improvement within the Commons. Such costs may include underground sprinkler system, lakes, docks, fishing piers, walking trails, streams, retaining walls, line painting, and lighting; maintenance of sanitary control; snow and ice removal; rubbish and other refuse removal and control; public liability and property damage insurance premiums; reserves for capital replacements; depreciation on equipment and machinery used in such maintenance; postage, photocopies, telephone and fax charges; and other expenses and personnel required to provide such services and management, together with reasonable charge for overhead not to exceed ten percent (10%) of the foregoing, or amounts paid to independent contractors for any or all of such services. The Association shall keep accurate records of the costs associated with the administration, maintenance, and improvements of the Commons for the purpose of making assessments as provided by these Covenants.

J. Binding Covenants: Each Lot Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association regular annual assessments for charges for the purpose of operating the Association and maintaining the common areas. In addition, each Lot Owner, by acceptance of the deed, therefore agrees to pay any special assessments for capital improvement or repairs to the Association's Property. Outlot 1 is subject to charges for purposes of operating the Association and/or assessments, regular or special. Outlots 2, 3 and 4 are not subject to charges for the purposes of operating the Association and/or assessments, regular or special.

K. Assessments Benefit the Association: The assessments levied by the Association shall be used without any part of the net earning inuring to the private benefit of its members. Assessments shall be used to maintain Woodland Lakes as described in Paragraph G above. The Association shall also be authorized to expend portions of the assessments for such purposes as are approved by the Association in its budget adopted at the duly called annual meeting of the Association.

L. Budgeting: Before each fiscal year, the Board of Directors of the Association shall adopt and establish, in reasonably itemized detail, an annual budget for the then anticipated fiscal affairs and general operations for the Association for that year, and shall levy and collect annual assessments from each Lot which shall be sufficient to fund the budget for the fiscal year.

M. Capital Improvements Special Assessments: The Association, through the Board of Directors, may propose special assessments, which shall be made to fund the cost of capital improvements or major repairs to the Association's property. Said special assessments shall be assessed equally among the Lots, including Outlot 1. The special assessments shall be due annually on a date determined by the Board of Directors and delinquent thirty (30) days thereafter. Special Assessments may be collectable over a period of years not to exceed fifteen

(15) years. Special Assessments may only be made upon an affirmative vote of a majority of the Owners entitled to vote. When presented for a vote, the total amount to be specially assessed, the number of years over which the special assessments will be paid, and the annual amount of assessments shall be set forth on the ballot presented to the Lot Owners and the Owner of Outlot 1 for a vote.

N. Determination of Assessments: The Board of Directors of the Association shall fix the assessments. Regular assessments shall be determined in accordance with subparagraph L hereof. Assessments may be regular or special and payable in such periodic installments as the Board of Directors shall determine. The assessments shall be charged equally to each Lot and Outlot 1. Special assessments shall be determined pursuant to subparagraph M above.

O. Payment: The members shall pay assessments to the Association as billed. Unless these Covenants are amended, regular assessments shall be payable annually, in advance, with the full annual assessment due within thirty (30) days of the date of the statement, which shall be the due date. Special assessments shall be payable annually in advance within thirty (30) days of the date of the statement which shall be the due date. The By-Laws of the Association may detail more specifically the assessment procedure. Each such assessment, regular or special, shall be the personal obligation of the person who was the Lot Owner, including the Owner of Outlot 1, at the due date of the assessment, if not paid by such due date shall bear interest at the rate then being charged by Dodge County for delinquent taxes until paid, and, when shown of record, shall be a lien upon the Lot and Outlot 1.

P. Delinquent Assessments and Lien: If any assessment, regular or special, is not paid within thirty (30) days after the due date, it shall be deemed delinquent and shall bear interest at the rate then being charged by Dodge County for delinquent taxes until paid. Should any such assessment remain unpaid for more than thirty (30) days after the due date, the Association may declare the entire unpaid portion of said assessment for the year, in the case of a regular assessment, or for the entire special assessment payment period, in the case of a special assessment, immediately due and payable and, thereafter, delinquent. The Association may bring an action at law and, in such case, the Association shall be entitled to recover and shall be indemnified by the delinquent Lot Owner, including the Owner of Outlot 1, against the interests, costs and reasonable attorney's fees incurred with respect to such action. The Association shall also have a lien of such assessment against the property, together with interest and together with any costs and attorney's fees awarded, which liens shall lie against the Lot or Outlot 1. The Association may foreclose the lien of such assessment against the property through proceedings in any court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape personal liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot, including the Owner of Outlot 1. The personal obligation for delinquent assessments shall not pass to the Lot Owner's successor in title unless such assessments are expressly assumed by the successor, but all successors shall take title subject to the lien for such assessments and shall be bound to inquire of the Association as to the amount of any unpaid assessments.

Q. Declaration of Lien: At any time after an assessment, regular or special, becomes delinquent, the Association may file a Declaration of Lien with the Register of Deeds Office of Dodge County, Nebraska, perfecting the lien and providing notice of the Association's lien.

R. Lien of Assessments: The lien for assessments shall be prior to all other liens and encumbrances on a lot and improvements except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced is recorded, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessments become due. The mortgagee of any Lot shall have the right to cure any delinquency of a Lot Owner, including the Owner of Outlot 1, by payment of all sums due, together with interests, costs and attorney's fees. In such case, the Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association. If the Board of Directors determines that a lien has no value to the Association, the Association, if authorized by its Board of Directors, may release the lien of any delinquent assessment on Lot or Outlot as to which a mortgage, land contract or deed of trust for initial purchase money security or home improvement is in default.

S. Certificate as to Assessments: The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, the due date and amount of next succeeding assessments or installment thereof.

T. Allocation of Assessments: Assessments shall be based upon the number of Lots with the total amount of assessment be divided equally between each of Lots one (1) through twelve (12), plus Outlot 1, of the Subdivision.

U. Sanctions Against Owners: The Association may suspend the voting rights and use of the Common Facilities for a Lot Owner, including the Owner of Outlot 1, for any period during which any assessment, regular or special, against the Owner's Lot remains unpaid. The Association may suspend the Lot Owner's right, including the Owner of Outlot 1, to use the Commons for any period not to exceed one (1) year for an infraction by any such Owner, or members of the Owner's family, or guests or tenants of the Owner of the Rules and Regulations of the Association. Any such suspensions may, in the discretion of the Board of Directors, be also directed at the Owner's family, guests or tenants, as well as the Owners.

V. In the event any of the existing Lots one (1) through twelve (12), and/or Outlot 1, are combined with another Lot or Lots, each of the original Lots that existed before the combination shall continue to be assessed by the Association. In the event any of the existing Lots one (1) through twelve (12) or Outlot 1 are subdivided, each of the subdivided Lots shall be subject to the assessments of the Association, regular or special, provided, however, that the additional assessments for the subdivided Lots (excluding the assessment for the original Lot) shall commence at the time each subdivided Lot is sold by the subdividing Lot Owner to a third

party. If at the time there is a subdivision of a Lot, including Outlot 1, there is a special assessment for capital improvement, the subdivided Lots, excluding the original Lot, shall be subject to the payment of the special assessments, commencing at the time each subdivided Lot is sold by the subdividing Lot Owner to a third party. The Association, through its Board of Directors, may, as a result of the subdivision, reallocate the payment obligation for special assessments across all of the Lots of the subdivision, including Outlot 1, and the subdivided Lots.

ARTICLE VI

HOMEOWNERS ASSOCIATION – STRUCTURE AND MANAGEMENT

A. Corporate Structure: The structure of the Homeowners Association shall be as a not-for-profit corporation organized by the Declarant pursuant to the Nebraska Nonprofit Corporation Act.

B. Powers: The Association shall have the powers conferred upon not-for-profit corporations by the Nebraska Nonprofit Corporation Act and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association as more particularly set out in the Articles of Incorporation and By-Laws of the Corporation.

C. Board of Directors: There shall be a Board of Directors of the Corporation, which shall initially consist of six(6) Directors. Until such time as the Declarant deeds the Commons to the Association pursuant to Article V E, the Directors shall be David L. Christensen, Cynthia A. Christensen, Diane E. Christensen Hillis, Thomas A.F. Christensen, Jeffrey A.M. Christensen and John L.R. Christensen. Commencing at the time of the conveyance of the Commons, as set forth in Article V E, there shall be a new election of Directors seating five (5) Directors as voted by the Members of the Association. Voting by Members, the election of Directors, the powers and duties to be exercised by the Board of Directors, and shall be as more particularly set forth in the Articles of Incorporation and By-Laws of the Corporation.

ARTICLE VII

GENERAL PROVISIONS

A. Enforcement: The Homeowner's Association, or its assigns, or any Owner of a Lot named herein shall have the right to enforce by proceeding in law or in equity, all restrictions, conditions, covenants, and reservations, not or hereinafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or dues for such violation. Failure by the Homeowner's Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. Covenants Perpetual: The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity and shall be binding upon the Declarant, the Association, the Lot Owners and all persons claiming title through them.


C. Amendment: Until April 20, 2017, which is ten (10) years following the date of the filing of the original Covenants, the Declarant shall have the sole, absolute and exclusive

right to amend, modify or supplement all or any part of these Covenants from time to time by executing and recording one or more duly acknowledged Amendments to the Restrictive Covenants for Woodlands Lakes, a subdivision in Dodge County, Nebraska, in the offices of the Register of Deeds of Dodge County, Nebraska. Thereafter, these Covenants may be amended by an instrument signed by the Owners of not less than seven (7) of the twelve (12) Lots, plus Outlot 1, of Woodland Lakes; provided, however, that the provisions of these Covenants relating to Outlot 1, which exclude Outlot 1 from the Commons, fixing ownership and control of Outlot 1 in the Declarant, granting Christensens, Declarant, its Members-Owners, and their heirs, successors and assigns, together with invitees and licensees, easements and rights-of-way across Woodland Trail and Woodland Cove and permitting horses on Outlot 1, are not subject to amendment without the written consent of the Declarant, which consent shall also be filed in the Office of the Register of Deeds of Dodge County, Nebraska.

D. Savings Clause: Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions hereof which shall remain in full force and effect.

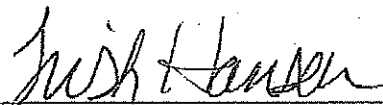
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the dates noted below.

WOODLAND LAKES, LLC

By 
David L. Christensen, President

STATE OF NEBRASKA)
COUNTY OF DODGE) ss.

The foregoing instrument was acknowledged before me this 26th day of May, 2010 by David L. Christensen as President and on behalf of Woodland Lakes, LLC.


Notary Public

